OSHA & COVID-19
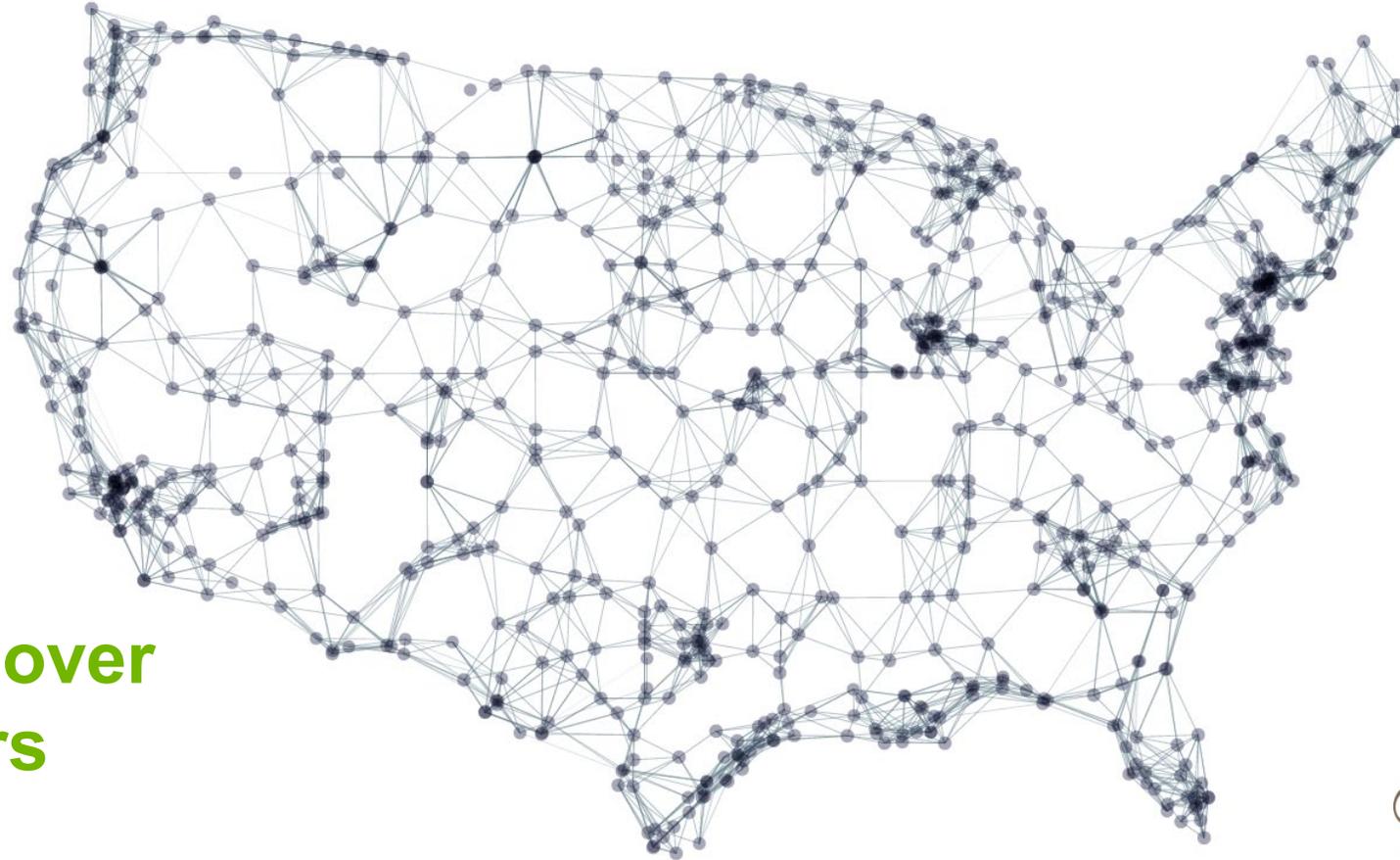
Infectious Disease Preparedness Planning

Coast to Coast Administration

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Presenter

Joe Aitchison, SPHR, SHRM-SCP, CHRS
Joe provides Business & HR client advisory services and HR out-source services nationally. He is a Human Resource professional with over twenty five years business management and HR consulting experience. He has worked with multi plant International Tier I Automotive Manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison serves on several for profit and not for profit boards.

What We Will Cover

✓ New OSHA Guidance – Reopening Workplaces (January 29, 2021) President Biden – EO/OSHA Directive

✓ New OSHA Directive For Compliance Safety and Health (CSHOs) – Issued March 12 , 2021

✓ Pandemic Response & Exposure Control Plans & Procedures – What to include.

✓ Hazard Assessments

✓ Control Measures to limit the spread of the virus

✓ Employee Training Requirements and Best Practices – Preventing the spread of the coronavirus and other infectious diseases

✓ Guidelines and Recommendations for PPE use

✓ Infectious Disease Policies and Procedures - Pandemic Response Plans

✓ Employee Risk Assessments – Employee exposure and risk determination review.

✓ OSHA Enforcement

✓ COVID-19 Record Keeping

✓ Review Risk Matrix to minimize exposure in the workplace

New OSHA COVID-19

President Joe Biden issued an executive order on Jan. 21, 2021, directed at the health and safety of American workers and workplace safety. Within days, on Jan. 29, 2021, the Occupational Safety and Health Administration (OSHA) issued new guidance in response to the executive order.

OSHA COVID -19 Guidelines are not regulation

- **Creates "no new legal obligations"**

- Intended to provide recommendations and descriptions to comply with **existing "mandatory safety and health standards"**

  - **This guidance is intended for planning purposes**. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available."

NEW COVID-19 Guidelines

OSHA COVID-19 Guidelines ~ January 29, 2021

Prevention-Program Elements (summary)

Implementing a coronavirus protection program is the most effective way to reduce the spread of the virus, OSHA noted. The guidance recommends several essential elements in a prevention program:

- Conduct a hazard assessment.

- Identify control measures to limit the spread of the virus.

- Adopt policies for employee absences that don't punish workers. This can encourage potentially infected workers to remain home.

- Ensure that coronavirus policies and procedures are communicated to both English- and non-English-speaking workers.

- Implement protections from retaliation for workers who raise coronavirus-related concerns.

New OSHA Guidelines

OSHA Updated COVID-19 Guidance for Employers

The most effective COVID-19 prevention programs engage workers and their representatives in the program's development and implementation at every step, and include the following elements:

1. **Assignment of a workplace coordinator** who will be responsible for COVID-19 issues on the employer's behalf.

2. **Identification of where and how workers might be exposed to COVID-19 at work.** This includes a thorough hazard assessment to identify potential workplace hazards related to COVID-19. **This assessment will be most effective if it involves workers (and their representatives) because they are often the people most familiar with the conditions they face.**

3. **Identification of a combination of measures that will limit the spread of COVID-19 in the workplace, in line with the principles of the hierarchy of controls.**
   - eliminating the hazard by separating and sending home infected or potentially infected people from the workplace;
   - implementing physical distancing in all communal work areas [includes remote work and telework];
   - installing barriers where physical distancing cannot be maintained;
   - suppressing the spread of the hazard using face coverings;
   - improving ventilation;
   - using applicable PPE to protect workers from exposure;
   - providing the supplies necessary for good hygiene practices; and
   - performing routine cleaning and disinfection.

New OSHA Guidelines

4. **Consideration of protections for workers at <u>higher risk for severe illness</u> through supportive policies and practices.** <u>Older adults</u> and people of any age who have health conditions.

5. **Establishment of a system for communicating effectively with workers and in a language they understand.**

6. **Educate and train workers on your COVID-19 policies and procedures using accessible formats and in a <u>language</u> they understand.**

7. **Instruct workers who are infected or potentially infected to stay home and isolate or quarantine**.

8. **Minimize the negative impact of quarantine and isolation on workers.** When possible, allow them to telework, or work in an area isolated from others.

9. **Isolating workers who show symptoms at work.** Workers who appear to have <u>symptoms</u> upon arrival at work or who develop symptoms during their work shift should immediately be separated from other workers, customers, and visitors, sent home, and encouraged to seek medical attention.

New OSHA Guidelines

11. **Performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility**. If someone who has been in the facility is <u>suspected or confirmed to have COVID-19</u>, follow the <u>CDC cleaning and disinfection recommendations</u>.

   This includes:
   a) Closing areas used by the potentially infected person for enhanced cleaning.
   b) Opening outside doors and windows to increase air circulation in the area.
   c) Waiting as long as practical before cleaning or disinfecting (24 hours is optimal).
   d) Cleaning and disinfecting all immediate work areas and equipment used by the potentially infected person,
   e) <u>Vacuuming the space if needed</u>
   f) Providing cleaning workers with disposable gloves. Additional PPE (e.g., safety glasses, goggles, aprons) might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
   g) After cleaning, <u>disinfecting the surface with an appropriate EPA-registered disinfectant on List N: Disinfectants for use against SARS-CoV-2</u>.
   h) Following requirements in OSHA standards <u>29 CFR 1910.1200</u> and <u>1910.132</u>, <u>133</u>, and <u>138</u> for hazard communication and PPE appropriate for exposure to cleaning chemicals.
   i) If it is more than 7 days since the infected person visited or used the facility, additional cleaning and disinfection is not necessary. Continue <u>routine cleaning and disinfection</u>, described below.

12. **Providing guidance on screening and testing**

New OSHA Guidelines

12. **Recording and reporting COVID-19 infections and deaths:** Employers are responsible for recording work-related cases of COVID-19 illness on their Form 300 logs if the following requirements are met:

(1) the case is a confirmed case of COVID-19;
(2) the case is underlined work-related (as defined by 29 CFR 1904.5); and
(3) the case involves one or more relevant recording criteria (set forth in 29 CFR 1904.7) (e.g., medical treatment, days away from work).

Employers must follow the requirements in 29 CFR 1904 when reporting COVID-19 fatalities and hospitalizations to OSHA. More information is available on OSHA's website. Employers should also report outbreaks to health departments as required and support their contact tracing efforts.

13. **Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards.**

14. Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.

New OSHA Guidelines

15. **Do not distinguish between workers who are vaccinated and those who are not.**

16. **Other applicable OSHA Standards:** All of OSHA's standards that apply to protecting workers from infection remain in place. These standards include

- respiratory protection (29 CFR 1910.134),
- sanitation (29 CFR 1910.141),
- protection from bloodborne pathogens: (29 CFR 1910.1030),
- OSHA's requirements for employee access to medical and exposure records

Note: There is no OSHA standard specific to COVID-19; however, employers still are required under the General Duty Clause, Section 5(a)(1) of the OSH Act, to provide a safe and healthful workplace that is free from recognized hazards that can cause serious physical harm or death.

OSHA & COVID-19

Employers should do the following:

- Develop an Infectious Disease Preparedness and Response Plan
- Develop policies and procedures for prompt identification and isolation of sick people, if appropriate
- Develop, implement, and communicate about workplace flexibilities and protections
- Implement workplace controls
- Engineering controls (not required for low-risk employers)
- Administrative controls
- Safe work practices
- Personal Protective Equipment (PPE)
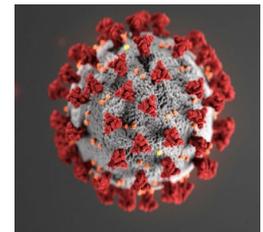
Liability Issues For Employers

Some employees are walking out or refusing to return to work due to heightened COVID-19 concerns.

- **National Labor Relations Act -** Concerted Activity Claims.

  - **Interfering with employee rights (Section 7 & 8(a)(1))** *

- **OSHA -** Most states require employees to file health related claims (WC Claims) through OSHA

  - The virus was present in the workplace and the employer's efforts to control exposure were insufficient;

  - Employees were required to perform tasks that exposed them to the virus without adequate PPE

- **Negligence claims can be brought through civil claims**

COVID-19 Employment Litigation

DOL & ADA

- Furloughs, layoffs, reductions-in-force, and other terminations

- WARN Act implications (Business Closing / Layoffs)

- Wage and hour adjustments (Work from home pay issues)

- FFCRA paid sick leave and emergency family leave

- Workplace privacy standards (including medical information, temperature-gathering, etc.) (HIPAA / DOL-FMLA)

- Disability accommodation issues

- Discrimination, harassment, and retaliation allegations EEOC/DOL

- Employee defection, duty of loyalty, and trade secrets

- Class and collective actions

FFCRA – Civil claims & Lawsuits

Plaintiff Claims – Civil Suits

The plaintiff alleges that the employer was negligent by:

- failing to provide employees with a safe place to work;
- failing to properly train employees about contracting COVID-19 at work;
- failing to timely provide PPE to employees;
- failing to conduct contact tracing;
- failing to test employees for COVID-19;
- failing to timely quarantine employees exposed to COVID-19;
- failing to apply social distancing measures for employees;
- failing to properly clean areas;
- failing to warn employees of the dangers of contracting COVID-19 at work;
- failing to follow its own safety rules, practices, and procedures.

COVID-19 Employment Litigation

Total Cases	Most New Cases Last 7 Days	Most Common Case Type
1,995	California - 13	**Remote Work / Leave Conflicts**
*from 1/30/2020 to 3/26/2021	Florida - 5	Most Common Industry
	New Jersey - 5	**Healthcare**

Case Type

All

Filing Date: 1/30/2020 — 3/26/2021

Venue Type: ☐ Federal ☐ State

Plaintiff Type: ☐ Individual(s) ☐ Class

Total Cases | Cases by Population

Last Updated: March 30, 2021

State / Case Type | Case Type / State | **Case Analysis →**

State / Case Type	Cases	Cases by Population*
Alabama	21	4.28
Alaska	4	5.47
Arizona	10	1.37
Arkansas	7	2.32
California	466	11.79
Colorado	19	3.30
Connecticut	39	10.94
Delaware	1	1.03
District of Columbia	15	21.25
Florida	147	6.84
Georgia	33	3.11
Hawaii	3	2.12
Idaho	7	3.92
Illinois	60	4.73
Indiana	28	4.16
Iowa	25	7.92
Kansas	4	1.37
Kentucky	54	12.09
Louisiana	10	2.15
Maine	1	0.74
Maryland	16	2.65
Massachusetts	12	1.73
Total	**1,993**	**110.00**

COVID-19 Employment Litigation Tracker And Alerts (fisherphillips.com)

National Labor Relations Act

- **National Labor Relations Act Section 7 & 8**

- **Section 7** of the National Labor Relations Act (the Act) guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or **other mutual aid or protection**, as well as the right "to refrain from any or all such activities."

- **Section 8(a)(1)** of the Act makes it an **unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7**" of the Act…

- **COVID-19 NLRA Protected Employee Concerns are occurring more frequently**

- This includes **work stoppages, demands for premium pay or improved working conditions, and public protests and other appeals to the public via news and social media.**

- **Question**: If <u>employees</u> refuse to come to work fearing they will contract COVID-19, does that qualify as protected-concerted activity and protected under the NLRA?

- **Response:** Most likely yes. Under the NLRA, employees may have the right to refuse to work in conditions they believe to be unsafe. Most likely covered under concerted activity for the mutual aid and protection of coworkers.

- To refuse to work, employees should have a "reasonable, good-faith belief" that working under certain conditions would not be safe. The NLRA also protects employees if they are "honestly mistaken".

Some States Establish Limited Liability

COVID-19 Limited Liability Laws

- Alabama
- Arkansas
- California–Small Business LT 25 EEs
- Iowa,
- Indiana
- Kansas,
- Louisiana,
- Massachusetts,
- Mississippi
- Nevada
- North Carolina,
- Nevada
- Oklahoma,
- Tennessee
- Utah
- Wyoming

Current federal law provides COVID-19 limited liability protection for health care and manufactures of PPE.

Private & public sector employers should review state COVID-19 limited liability laws and executive orders.

- Some states limit liability for employers and others from claims relating to COVID-19 exposure.

- Provide immunity from liability for claims of exposure to, or infection from, COVID-19 **where an employer is acting in good faith in accordance with federal, state, or local guidance, and is not intentionally or recklessly negligent**.

- More states are drafting similar laws.

https://www.jdsupra.com/legalnews/50-state-update-on-covid-19-business-2317578/
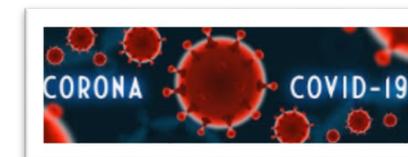
Employee Waivers

- **COVID-19 Employee Waiver Agreements**

- Most often considered to be unequal bargaining power between the employee and the employer. Employer having superior bargaining power.

- In most states employee waiver agreements do not protect the employer form gross negligence or willful, intentional, or wanton conduct.

- **Employee waivers do not protect employers from OSHA complaints or enforcement action when a workplace is dangerous and in violation of the general duty clause** stating an employer is to provide a safe and healthy work environment free from harm.

- **Some states (California as example) have established a rebuttal presumption** that workers who contract COVID-19 are presumed to have a workplace injury covered by the workers' compensation system.

- **Waiver Agreements do make sense** when the employer engages with customers or guests (Athletic Clubs, Show Rooms)

Limited Liability Risk Exposure

Employer Negligence not covered

- Failure to provide a safe work environment (OSHA)
  - Number of employee's contract COVID-19 "allegedly" at work
    - Does the employer have a "Pandemic Response Plan' in place? (DOL /ADA/OSHA)
      - Did the employer conduct "Contact Tracing"
- Did the employer conduct Employee / Manager Pandemic Response Training?
- Did the employer interfere with the employee's rights under the NLRA
  - Concerted Activity Section 7 & 8

OSHA - Liability Issues For Employers

OSHA Whistleblower Claims:

https://www.whistleblowers.gov/covid-19-data

Whistleblower Complaints Filed - State Plans (totals to date)

2021

March

			Screenings		Dockets	
Through Date	Total Number of Complaints Filed	New Complaints Since Last Report	Pending	Screened and Administratively Closed	Docketed for Investigation	Docketed and Completed
3/28/2021	1,772	27	49	748	978	495

Whistleblower Complaints Filed - Federal (totals to date")

2021

March

			Screenings			Dockets	
Through Date	Total Number of Complaints Filed	New Complaints Since Last Report	Pending	Screened and Referred to State Plans	Screened and Administratively Closed	Docketed for Investigation	Docketed and Completed
3/28/2021	5,111	38	13	1,070	2,721	1,307	687

OSHA Whistleblower & Retaliation Claims

Practical Considerations for Employers

COVID-19 related employee retaliation termination / layoff complaints are increasing

- **Encourage employees to report health and safety concerns.** Ensure that employees have multiple avenues to immediately raise their concerns.

- **Employees should _never_ be disciplined or terminated because they raised or escalated complaints about a potential violation of health and safety laws or procedures.**

- There may be independent, non-retaliatory reasons for taking adverse action against an employee who also previously raised health and safety concerns, but any decision regarding an adverse action should not be part of the decision.

- If independent reasons justify disciplinary action against an employee who recently raised health or safety concerns, the employer should ensure the reasons are properly documented, consistent with the company's policies and procedures, and that other employees who have engaged in similar conduct—but who have not complained of health and safety concerns—received the same disciplinary action.

- **MAKE SURE to document any and all S&H concerns and complaints**. Include date, time, who made and received the complaint and information of the specific complaint

- **Confirm that your policies and procedures provide information on escalating complaints to the appropriate member of management** for review, investigation and action plan.

- Review and update the company's policies and procedures that prohibit retaliation

- Provide complaint procedure training for managers & supervisors.

COVID-19 Acknowledgement Form

Visitor & Employee Health Screening

Conduct health screenings each time an employee or visitor enters the facility.

If a worker or visitor answers "Yes" to any of the screening questions or, their temperature screening is higher than 100.4 (F), they should be advised to go home, stay away from other people, and contact their health care provider.

Health Screening Questions:

Travel

☐ Have you Traveled in the last 14 Days? Yes ____ No ____

Health

Have you had any of the following symptoms since your last day at work or the last time you were here that you cannot attribute to another health condition?

Please answer "Yes" or "No" to each question. Do you have:

☐ Have you had close contact with a confirmed/probable
COVID-19 Case?   Yes ____ No ____

☐ Fever or feeling feverish?   Yes ____ No ____

☐ Chills?   Yes ____ No ____

☐ A New or Dry Cough?   Yes ____ No ____

☐ Shortness of Breath?   Yes ____ No ____

☐ A Sore Throat?   Yes ____ No ____

☐ Muscle Aches?   Yes ____ No ____

☐ Headache?   Yes ____ No ____

☐ Loss of smell or taste?   Yes ____ No ____

☐ Digestive Symptoms
   - Diarrhea   Yes ____ No ____
   - Vomiting or   Yes ____ No ____
   - Abdominal Pain   Yes ____ No ____

Temperature Reading

☐ Temperature Reading _____ (F)

Note: If temperature is higher than 100.4 Degrees (F) – Isolate the individual and retest in 5 minutes. Higher reading may be do to prolonged exposure to heat (high outdoor temperature) prior to being tested.

CARONAVIRUS EMPLYEE AND GUEST SCREENING PROCESS

WORKERS/VISTOR

- ENTER THE FACILITY AND GO DIRECTLY TO THE SCREENING STATION (follow the posted chart)
- PLEASE REMOVE ANY CAPS, HATS, OR HOODS
- MAINTAIN 6FT SOCIAL DISTANCING WHEN WAITING FOR SCREENING
- WORKERS - IF THE SCREENING PROCESS EXTENDS PAST Y O U R S T A R T T I M E, YOU WILL BE CLOCKED IN AS BEING ON TIME

SCREENING QUESTIONS

1. DO YOU HAVE ANY OF THE FOLLOWING SYMPTOMS: FEVER, CHILLS, A NEW OR DRY COUGH, SHORTNESS OF BREATH, SORE THROAT, MUSCLE ACHES, HEADACHE, LOSS OF SMELL OR TASTE OR, DIGESTIVE SYMPTOMS SUCH AS DIARRHEA, VOMITING AND ABDOMINAL PAIN?
2. HAVE YOU TRAVELED WITHIN THE LAST 14 DAYS?
3. HAVE YOU HAD CLOSE CONTACT WITH A CONFIRMED/PROBABLE COVID-19 CASE?

DO NOT CONGREGATE WHILE WAITING FOR SCREENING!

SCREENING STATION

Entrance DOOR

6FT 6FT 6FT 6FT 6FT

- SCREENING CONSISTS OF:
  - A TEMPERATURE SCAN (TEMPERATURE LESS THAN 100.4 DEGREES
  - COMPLETING CORONAVIRUS SURVEY

- IF AN INDIVIDUAL ANSWERS YES, OR REFUSES TO ANSWER, THEY WILL FAIL THE SCREENING AND BE ESCORTED OUT OF THE BUILDING

DOL- Return to Work

Employer requirements for an employee returning to work following a COVID-19 Exposure

- **The employer can require an employee to:**

  - Remain symptom-free for a specified amount of time before returning to work

    - 10-14 days based on CDC or state guidelines

  - Return to Work Release from a HCP

- **Employer Considerations:**

  - Under the Americans with Disabilities Act (ADA), an employer may:

    - require a doctor's note,

    - a medical examination,

    - or a time period during which the employee has been symptom free, before it allows the employee to return to work.

  - The employer may require the above actions of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would:

    - Impair the employee's ability to perform **essential job** with or without reasonable accommodation, or,

    - Pose a **direct threat** (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

OSHA & COVID-19

- This is not a regulation

- Creates "no new legal obligations"

- Intended to provide recommendations and descriptions on to comply with **existing "mandatory safety and health standards"**

- Employer's General Duty Clause: Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards that are likely to cause death or physical harm.

- "**This guidance is intended for planning purposes**. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available."

Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

OSHA 3990-03 2020

U.S. Department of Labor

OSHA & COVID-19 Safeguard

Develop an Infectious Disease Preparedness and Response Plan

- If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

COVID-19 Return to Work Action Plan

What Employers Should Do As Employees Return To Work

1. Expect to hear safety concerns related to COVID-19 from your employees.

   - The best method to ensure that these employee concerns do not result in lawsuits is through communications and compliance with local, state, and federal guidance. Federal guidance includes CDC, FDA, and OSHA guidelines.

2. Promoting healthy hygiene practices (e.g., hand washing and employees wearing a face covering while at work);

3. Intensifying cleaning, disinfection, and ventilation of the workspace;

4. Canceling non-essential travel, and encouraging alternative commuting and telework;

5. Spatial changes to the workplace, including partitions, spacing out seating (more than six feet), and staggering gathering times;

6. Restricting use of any shared items and spaces; and

7. Training all employees in above safety-actions.

8. Reopen after implementing safeguards for the ongoing monitoring of employees after reopening, including:

   - Maintaining social distancing between employees;

   - Encouraging employees who are sick to stay home;

   - Establishing routine, daily employee health checks (e.g., temperature checks as employees enter the building);

   - Monitoring absenteeism and maintaining flexible time off policies;

   - Having an action plan if an employee gets COVID 19, including a strategy for communication of the infection to other employees;

   - Creating and testing emergency communication channels for employees; and

   - Establishing communication with state and local health authorities.

Mitigate Employer Risk

COVID-19 Preparedness Planning

- Employment policies, letters and forms

- Coronavirus company policy

- Work from home policy
- Work from home agreement

- Employee remote work policy

- Employee temporary lay off policy

- Termination and furlough letters

- ADA Policy - (Only for employers over 15 employees)

- COBRA Policy- (Only for employers over 20 employees)

- Essential Employee confirmation letter

- ER Contact Form- Each employee should have an ER contact on file

Mitigate Employer Risk

COVID-19 Preparedness Planning

Safety Policies, Plans and Checklist

- Communicable Disease Policy

- Infectious Disease Policy

- Pandemic Preparedness Plan

- Return to Work Checklist

COVID-19 Postings/Notices

- Federal Poster - WH1422 - Required to be posted

- Notice of Workplace Exposure

- Symptoms of COVID-19

- Protect yourself from COVID-19 in the workplace

- Prevent the spread of COVID-19 if you are sick

- How to wear and take off a cloth face covering

High Risk Employers / Geographic Hot Spots

- **OSHA's Investigation Plan for COVID-19 Complaints**

- OSHA announced in a memorandum (May 2020) that it will focus on high risk employer inspections in geographic areas experiencing either sustained elevated levels or a resurgence in community transmission of COVID-19 cases based on available resources.

  - Employers having:

    - High number of COVID-19 related fatalities

    - AN Environment where there is an imminent danger of exposures

    - **A high number of complaints** or known COVID-19 cases

  - OSHA's primary focus is high risk workplaces such as hospitals and other healthcare providers
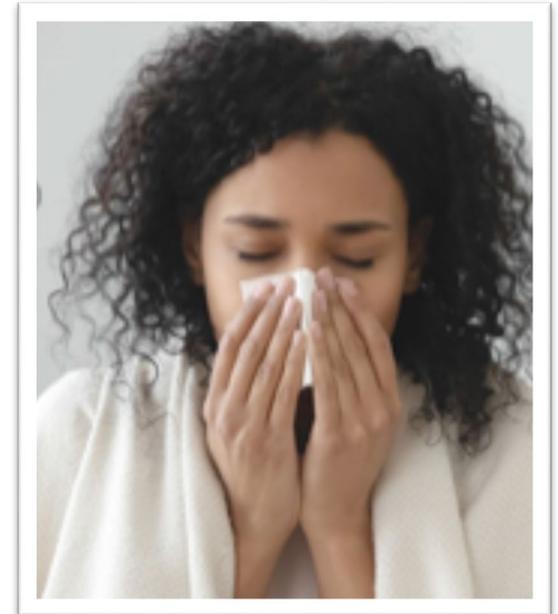
OSHA letter - Employer Notice (EE Complaint)
(Excerpt)

RE: OSHA Complaint No. [ ]

Dear Employer:

On [Date], the Occupational Safety and Health Administration (OSHA) received notification of alleged workplace hazard(s) at your worksite concerning [Potential illness**:** an employee exhibiting signs and symptoms of respiratory illness, such as, fever, cough, and/or shortness of breath, possibly indicating infection by SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), which is the virus causing the current coronavirus disease 2019 (COVID-19) pandemic.] **or** [**PPE shortage**: **employees not provided with adequate personal protective equipment (PPE),** such as respiratory protection, gloves, and gowns.] The specific nature of the complaint is as follows:

<< ENTER COMPLAINT INFORMATION >> ………

Currently, there is an outbreak of COVID-19, also known as Coronavirus. **At this time, OSHA is prioritizing its enforcement resources, and OSHA does not intend to conduct an on-site inspection in response to the subject complaint at this time. However, because allegations of violations and/or hazards have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than [Date Response Due], of the results of your investigation. You must provide supporting documentation of your findings.** This includes any applicable measurements or monitoring results; photographs/video that you believe would be helpful; and a description of any corrective action you have taken or are in the process of taking, including documentation of the corrected condition.

OSHA EE Complaint Letter *(Excerpt)*

This letter is not a citation or a notification of proposed penalty which, according to the Occupational Safety and Health Act, may be <mark>issued only after an inspection or investigation of the workplace</mark>. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. Depending on the specific circumstances at your worksite, several OSHA requirements may apply to the alleged hazards at your worksite, including:

- 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- 29 CFR § 1910.133, Eye and Face protection.
- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.141, Sanitation.
- 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.

If we do not receive a response from you by [Date Response Due] indicating that appropriate action has been taken or that no hazard exists and why, an OSHA inspection may be conducted. <mark>An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout/tagout, and related safety and health issues.</mark> Please also be aware that OSHA conducts random inspections to verify that corrective actions asserted by the employer have actually been taken.

OSHA EE Complaint Letter *(Excerpt)*

The CDC is recommending employers take the following steps to prevent the spread of COVID-19:

- **Actively encourage sick employees to stay home**

- **Accommodate employees through social distancing or telework (if possible)**

- **Emphasize respiratory etiquette and hand hygiene by all employees**

- **Perform routine environmental cleaning**

- **Check government websites (CDC, State Department) for any travel advisories (where applicable)**

- **Plan for infection disease outbreaks in the workplace**

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees, and to return a copy of the signed Certificate of Posting (attached) to this office. In addition, you are requested to provide a copy of this letter and your response to a representative of any recognized employee union or safety committee that exist at your facility. Failure to do this may result in an on-site inspection. The complainant has been furnished a copy of this letter and will be advised of your response. Section 11(c) of the Occupational Safety and Health Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

If you have questions regarding this issue, you may contact me at the address in the letterhead. I appreciate your personal support and interest in the safety and health of your employees.

Sincerely,
[Enter AD name]
Area Director

OSHA Recording COVID-19 Events

COVID-19 Work Related Determination

OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations.

OSHA Investigations will include the following considerations:

- Did the employer:
    1. Ask the employee how they believe they contracted COVID-19
    2. While respecting employee privacy, did the employer discuss with the employee his work and out-of-work activities that may have led to the COVID-19 illness; and
    3. Review the employee's work environment for potential SARS-CoV-2 exposure.
    4. Assess other workers in the same work environment contracting COVID-19 illness.

OSHA Recording COVID-19 Events

COVID-19 illnesses <u>are likely work-related when:</u>

1. Several cases develop among workers who work closely together and there is no alternative explanation.
2. If it is contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation. **(Contact Tracing)**
3. If his job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.

An employee's COVID-19 illness is <u>likely not work-related if:</u>

1. If the worker is the only one to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
2. If worker, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who
   - has COVID-19;
   - is not a coworker, and
   - exposes the employee during the period in which the individual is likely infectious.

COVID-19 is a respiratory illness and should be coded as such on the OSHA Form 300 when the criteria is met and the employee tests positive.

OSHA Recording COVID-19 Events

Under OSHA's recordkeeping requirements, COVID-19 is a **recordable** illness (29 CFR 1904), **if:**

- The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);[2]

- The case is work-related as defined by 29 CFR § 1904.5;[3] and

- The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.[4] (Days away from work and restricted work duties)

Recording a COVID-19 illness does not, of itself, mean that the employer has violated any OSHA standard.

- Employers with 10 or fewer employees and certain employers in low hazard industries have no recording obligations; they need only report work- related COVID-19 illnesses that result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.[5]

Infectious Disease Preparedness Plan ~ Content

Your COVID-19 Preparedness Plan must include and describe how your business will implement, at a minimum, the following, in compliance with the industry guidance, CDC guidelines and OSHA standards above:

1. Policies and procedures that assist in the identification of sick workers and ensure sick workers stay home;
2. Implementation of engineering and administrative protocols for social distancing;
3. Worker hygiene and source controls;
4. Workplace building and ventilation protocols;
5. Workplace cleaning and disinfecting protections and protocols;
6. Drop-off, pick-up and delivery protections and protocols; and
7. Communications, training and supervision protocols.

For businesses that engage with customers and clients, the COVID-19 Preparedness Plan must include and describe how your business will implement, at a minimum, the following, in compliance with the industry guidance, CDC guidelines and OSHA standards above:

8. What customers and clients can do to minimize transmission;

9. Additional protections and protocols for:

   • Receiving and exchanging payment;
   • For managing occupancy;
   • To limit face-to-face interactions; and
   • For distancing and barriers.

Preparedness Plan Requirements *(Components)*

Your COVID-19 Preparedness Plan must include and describe how your business will implement, at a minimum, the following, in compliance with the industry guidance, CDC guidelines and OSHA standards above:

- Management leadership and employee participation.
- Hazard identification and assessment.
- Hazard prevention and control.
- System evaluation and improvement.
- Support for workers who are exposed.
- Policies and procedures that assist in the identification of sick workers and ensure sick workers stay home;
- Implementation of engineering and administrative protocols for social distancing;
- Worker hygiene and source controls;
- Workplace building and ventilation protocols;
- Workplace cleaning and disinfecting protections and protocols;
- Drop-off, pick-up and delivery protections and protocols; and
- Communications,
- Education and training and supervision protocols.

OSHA & COVID-19 - Prepare to Implement Basic Infection Prevention Measures

All employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.

- Encourage workers to stay home if they are sick.

- Encourage respiratory etiquette, including covering coughs and sneezes.

- Provide customers and the public with tissues and trash receptacles.

- Employers should explore whether they can establish policies and practices, such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others.

- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.

- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

OSHA & COVID-19

Workplace Controls to ensure safe work environment

- Engineering

- Administrative

- Safe Work Practices

- Personal Protective Equipment (PPE)

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures that involve aerosol generation or specimen collection/handling.

Occupational Risk Pyramid for COVID-19

Very High

High

Medium

Lower Risk (Caution)

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

OSHA & COVID-19

Jobs Classified at Lower Exposure Risk:

- Lower exposure risk jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with the general public (within 6 feet).

- Workers in this category have minimal occupational contact with the public and other coworkers.

Preparedness Plan Requirements

For businesses that engage with customers and clients, the **COVID-19 Preparedness Plan** must include and describe how your business will implement, at a minimum, the following, in compliance with the industry guidance, CDC guidelines and OSHA standards on the previous slide:

- What customers and clients can do to minimize transmission;

- Additional protections and protocols for:

  - Receiving and exchanging payment;

  - Managing occupancy;

  - To limit face-to-face interactions; and

  - Distancing and barriers.

General Principles – Worker Protection

- Increase physical distancing between people to six feet.

- Everyone should wear masks.

- Flexibility in where and when to work.

- Wash hands frequently.

- Do not share equipment.

- Practice good housekeeping.

- Increase cleaning and disinfecting generally and thoroughly after a confirmed COVID-19 exposure.
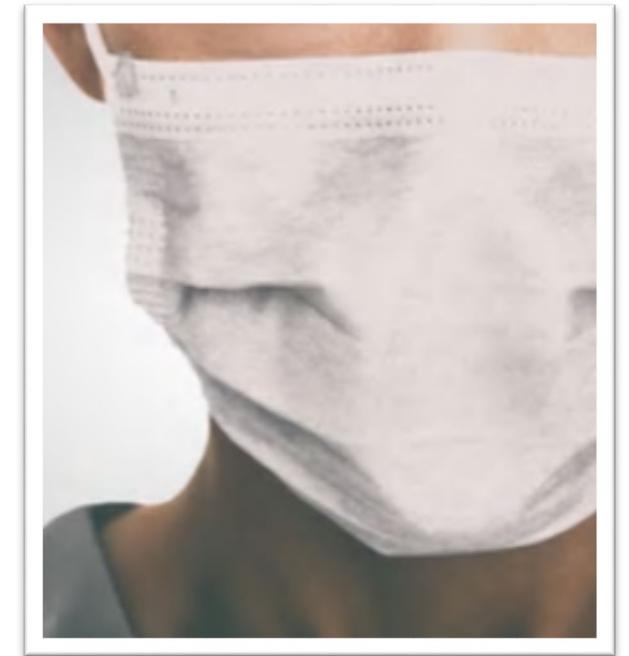
Assessing COVID-19 Risk

Transmission

COVID-19 is spread from person to person mainly through coughing, sneezing, and possibly talking, and breathing.

- **Droplets** - Secretions from coughing or sneezing landing on mucosal surfaces (nose, mouth, and eyes).

- **Aerosol** - A solid particle or liquid droplet suspended in air.

- **Contact** - Touching something with SARS CoV-2 virus on it and then touching mouth, nose or eyes.

- **Other possible routes** - Through fecal matter.
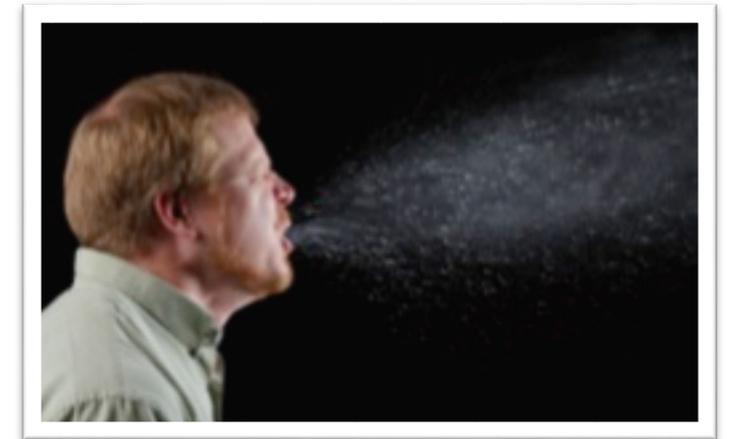
COVID-19 Employer Exposure Levels

High Potential for Exposure
- Healthcare / Patient Care
- Laboratories
- Emergency Medical Services
- Correctional facilities
- Law Enforcement
- Drug treatment centers
- Homeless shelters
- Home health care
- Environmental clean-up of SARS CoV-2

Medium Potential For Exposure
- Retail stores – Stocking shelves / Cashiers
- Public transportation
- Home visiting occupations – Home repairs / Plumbers, Electricians, others
- Postal and warehouse workers
- Public services – Processing public services & Benefits

Low potential for exposure
Jobs that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.
- Construction workers*
- Office worker
- Work from home

Job Hazard Analysis

1. Complete and job analysis for each job identifying risk exposure to COVID-19
2. Take photos if feasible.
3. Should be in writing.
4. Should be widely available to all employees and organizational stakeholders.
5. Should describe the time, place, and method of the assessment.

What is your communication plan with employees/ public you serve?

Identify risk → Assess risk → Control risk → Evaluate
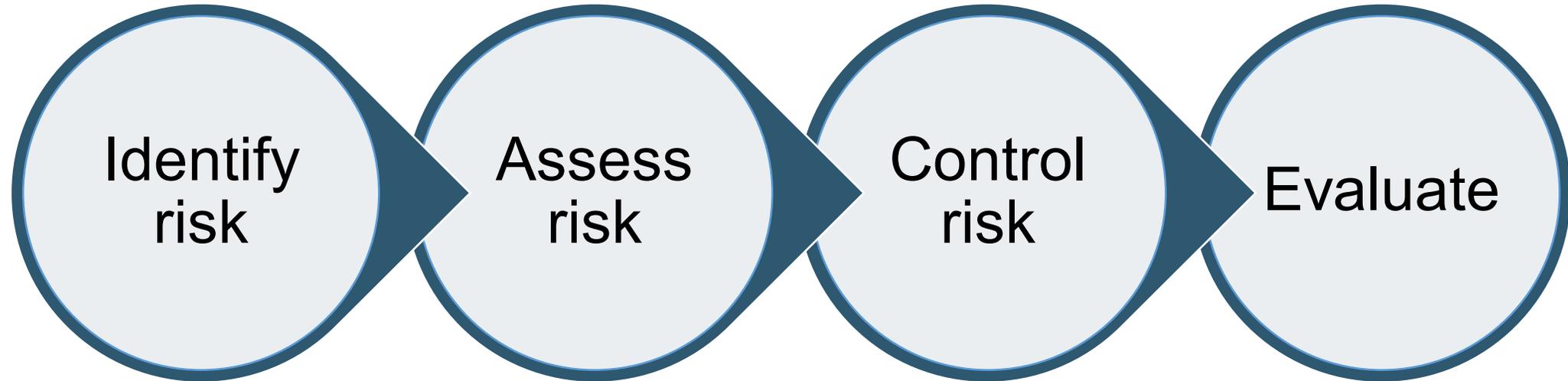
Include Workplace Controls in Your Plan

Workplace Controls **to ensure safe work environment**

- Engineering

- Safe Work Practices

- Administrative

- Personal Protective Equipment (PPE)

Occupational Risk Pyramid for COVID-19

Very High

High

Medium

Lower Risk (Caution)

Hierarchy of Controls

Most effective → Least effective

- **Elimination** — Physically remove the hazard
- **Substitution** — Replace the hazard
- **Engineering Controls** — Isolate people from the hazard
- **Administrative Controls** — Change the way people work
- **PPE** — Protect the worker with Personal Protective Equipment
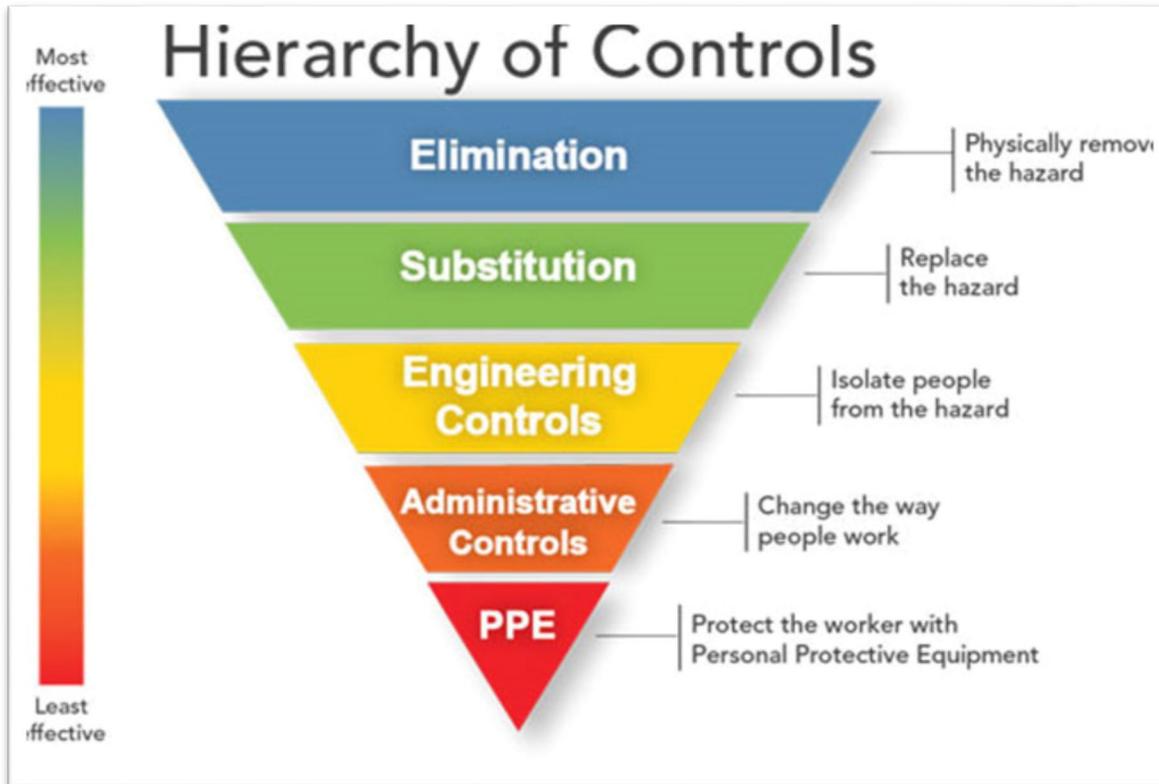
Using the results of the Hazard Analysis:

1. Determine if the exposure potential is high, medium, or low.
2. Select control measures using the hierarchy of controls.
3. Follow up by:
   - Evaluating the controls put in place
   - Assess if working as expected
   - Adjust / change controls when necessary to achieve outcome.

Admin Controls

Administration Controls to reduce exposure

- Written exposure control program.

- The number of customers allowed entrance is limited.

- Alter shift time starts / add shifts w/ reduced staffing

- Limit Access to your facility / Specific access points for employees and for guests

- Switch to take out/delivery only

- Discontinue non-essential travel.

- Cancel / not allow face-to-face meetings - Use email, phone, teleconferences

- Limit the number of employees present during high potential exposure times or when performing high potential tasks.

- Employee Training / Employer Postings

Administrative Controls

Basic Hygiene & Social Distancing

- Stay home when sick.

- Wash hands or use sanitizer frequently and after coughing, sneezing, blowing nose, and using the restroom.

- Avoid touching your nose, mouth, and eyes.

- Cover coughs and sneezes with tissues or do it in your sleeve.

- Dispose of tissues in no-touch bins.

- Avoid close contact with coworkers and customers (6 feet).

- Avoid shaking hands/wash hands after physical contact with others.

Administrative Controls

Soft barriers include use of tables, ropes, signs, and floor markings to maintain social distancing

Postings … Postings and **MORE POSTINGS**

Engineering & Other Controls

General limited or no cost Engineering Controls

- Desks or workstations are at least 6 feet apart.

- Ventilation / replace filters and system checks / Modifications

- Drive through service / Pickup

- Plastic shields and other barriers separating work areas

- Sneeze guards

- Touchless payment service
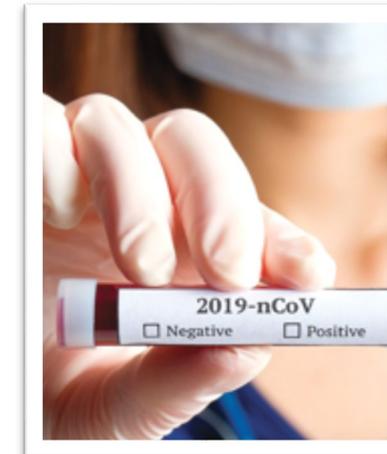
Hazard Elimination Methods

- Disinfectant and cleaning supplies are available to all employees.

- Disinfecting all payment portals, pens, and styluses after each use.

- Disinfecting all high-contact surfaces frequently.

- Hand sanitizer with at least 60% alcohol is available to all employees.

- Break rooms, bathrooms, and other common areas are disinfected on a schedule.

- Employee Temperature and symptom checks.

Personal Protective Equipment (PPE)

- PPE for jobs with high potential exposure

- Face/eye protection

- Gloves

- Gowns

- Respirators
  - At least N95
  - **Surgical and Cloth Face Masks are not respirators**

Employee Preparedness Training

Employee Training should cover all elements of COVID-19 Preparedness Plan.

- Must be hands-on and frequent.

- Review Policies and procedures to follow

- Should **<u>not</u>** be primarily computer based or lecture.

- Must include an opportunity to drill the actual process of donning and doffing PPE and respirators (if applicable)

- Videos of handwashing & donning & Doffing Face masks

Safety & Health

COVID-19 Infectious / Pandemic Preparedness Plan

PLAN PURPOSE

[EMPLOYER] is committed to providing a safe and healthy workplace for all our workers, and to providing a safe and healthy environment for all others who visit our property and facilities. Safety & health of everyone is the responsibility of all employees and our visitors. Any individuals who fail to follow these recommended guidelines place at risk themselves and others, Employees who do not follow these safety guidelines are subject to disciplinary action up to and including termination for repeated violations, visitors who fail to do will be escorted out of the facility.

All [EMPLOYER] personnel (without exception) are responsible for implementing and complying with all

aspects of this plan.

Our goal is to mitigate the potential for transmission of COVID-19 in our workplaces and that requires the full cooperation among management, staff, guests and others (Visitors) who visit our property and facilities, regardless of their reasons for doing so.

Through this cooperative effort, we can establish and maintain the safety and health of everyone who spends time at our facilities. Employees have the full support of the [EMPLOYER] Board of Directors and the [EMPLOYER] Executive Leadership Team in enforcing these provisions.

Safety & Health

We recognize that our employees are the most important assets of our organization and, with the cooperation of all employees it is our intent to provide a safe and healthy work environment that is free from harm and to, as best as possible, reasonably protect all employees after the pandemic crisis subsides. This plan has been created to be in alignment with guidance offered by the national Centers for Disease Control and Prevention (CDC) and other state and federal guidelines including OSHA guidelines for facilities of our type.

These guidelines address:

- Preventative Screening and Procedures for Employees
- Preventative Screening and Procedures for [EMPLOYER] vendors, visitors, and guests (Visitors)
- [EMPLOYER] Leave Policy for COVID-19 Mitigation
- Accommodations for Vulnerable Staff or Staff with Vulnerable Household Members
- Hygiene Protocols within the Workplace
- Respiratory Etiquette within the Workplace
- Social Distancing Protocols within the Workplace
- Facilities Management for COVID-19
- Communications and Training of [EMPLOYER] Staff regarding this policy and safety practices.

Reference & Information Sites

DOL FFCRA Q&A

https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

FFCRA Employer Fact Sheet

https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave

FFCRA Employee Fact Sheet

https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave/

DOL Posters - EPSL & "Emergency Family & Medical Leave Expansion Act

https://www.dol.gov/agencies/whd/posters

U.S. Government Ways & Means CARES

https://gop-waysandmeans.house.gov/cares-act-coronavirus-relief-check-questions-answered/
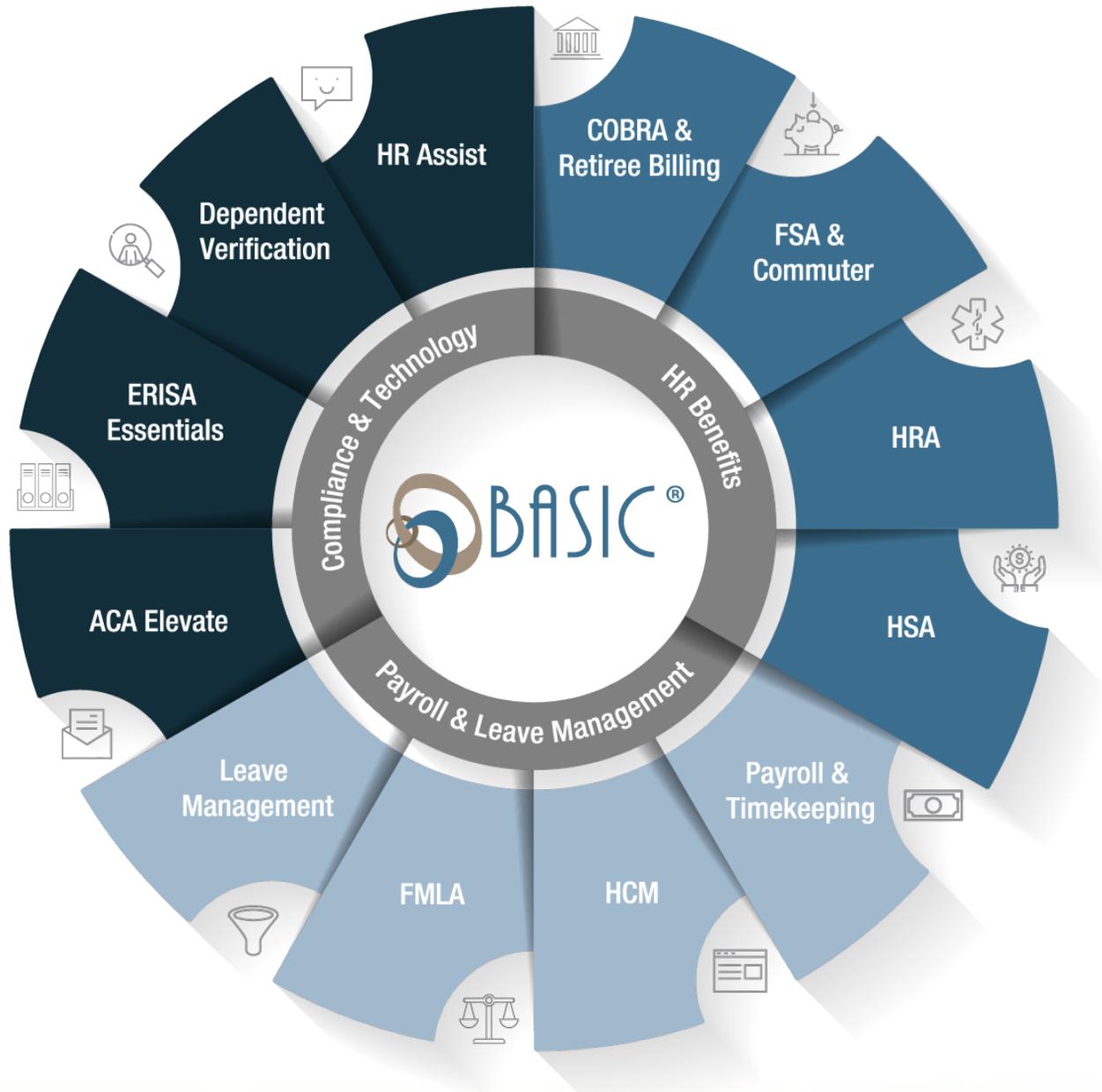
OSHA Guidance

https://www.osha.gov/Publications/OSHA3990.pdf

OSHA Q&A

https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#collapse49

Request a Proposal

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