

## **Updates to Reporting COVID-19 to ILOSHA and Avoiding Violations During Pandemic**

By: Frankie Giannetti, Loss Control Manager at IRMA

July 1, 2020

OSHA published several interim guidance documents for employers and its enforcement officers in response to the unprecedented COVID-19 pandemic. During the pandemic, OSHA's standard guidance to its enforcement officers' outlines protocols to investigate complaints, referrals, and employer-reported fatalities and hospitalizations to mitigate hazards and protect employees. Extra precautions are being taken to limit exposure by reducing on-site investigations. While there are no specific standards directly related to COVID-19, OSHA has noted a rise in complaints from workers during the initial months of the outbreak and have suggested they will investigate those reports that appear egregious in their neglect to protect workers from exposure to COVID-19. Reported complaints noted a lack of personal protective equipment (PPE) being offered to employees or enforcement of wearing it and inadequate training of OSHA standards relevant to protecting employees from exposure to illnesses or injury. At this time, there are no official COVID-19 standards from which a citation can be issued, however, employers can prepare for potential complaint and injury investigations response by ensuring other OSHA-compliant programs already enforceable under OSHA standards are formalized and employee training provided.

### **Relevant OSHA Standards to Consider**

**General Duty Clause** – Employers are obligated to provide employees with a working environment free from known hazards as part of compliance to the General Duty Clause.

**Injury and Illness Reporting** - Public sector employees that work for a municipality must report to IL OSHA all work-related fatalities within 8 hours, all work-related inpatient hospitalizations, and all amputations and all losses of an eye within 24 hours. Any of these conditions would apply to employees suspected or confirmed to have COVID-19.

**Injury and Illness Recordkeeping - Interim guidance issued April 10th has been rescinded effective May 26, 2020 and will remain in effect until further notice.** COVID-19 is a respiratory illness and should be coded as such under OSHA's recordkeeping requirements.

Employers are responsible for recording cases of COVID-19 if:

- The case is a confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);
- The case is work-related as defined by 29 CFR 1904.5; and
- The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.3.

Moving forward, OSHA now requires individualized assessments of each case and will be assessing employers' efforts in making work-related determinations. This assessment will consist of the following:

- Reasonableness of the employer's investigation into work-relatedness;
- Evidence available to the employer; and
- Evidence that a COVID-19 illness was contracted at work.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness. See [Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\)](#)

Note: See [IRMA Article](#) on Coronavirus and Workers Compensation.

**Hazard Communication** – As new chemicals and cleaning supplies are purchased to disinfect equipment and work areas, Safety Data Sheets (SDS) for new products along with its recommended PPE must be made available to employees. Training must be provided to those handling new chemicals upon assignment.

**Respiratory Protection** – N95 respirators are in high demand across all industries. Any employer requiring the use of N95 respirators as part of their response to COVID-19 must have a respiratory protection program in place that includes medical clearance and fit-testing. Optional or voluntary use of respirators can be authorized by the employer, and Appendix D of the OSHA standard must be part of the employer's written program. As employers within operating departments may face limitations of PPE availability, they should reassess their engineering controls, work practices, and administrative controls to identify any changes they can make to decrease the need for N95 respirators. Additionally, alternatives to N95 respirators should be considered per [Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#). Process changes should be documented, and re-training of employees completed.

**Personal Protective Equipment** – All Personal Protective Equipment, including equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition. This includes any protective equipment issued to protect against exposure to COVID-19. OSHA does not consider a cloth face covering as PPE at this time, however, continued guidance by state and local health officials to wear cloth face coverings while at work and in public should be addressed. IRMA suggests a supplement to an employer's formal PPE, Communicable Disease, or other relevant policy include guidance on the wearing of cloth face coverings in common areas and when social distancing is difficult to maintain. Additionally, attempts to obtain PPE necessary to perform certain work should be documented until the supply chain is restored.

Note: See [IRMA Article](#) on rebuttable presumption and the importance of PPE.

**Bloodborne Pathogens** – According to information provided on OSHA's COVID-19 Webpage, "OSHA's Bloodborne Pathogens standard applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard."

IRMA has several resources available for employers to create or update compliant programs relevant to protecting workers from COVID-19 exposure and other known workplace hazards.

Reach out to the Risk Management Department at any time for assistance.

**Resources:**

- [OHSA's COVID-19 Page](#)
- [Working Together for Safety: COVID-19 and OSHA Recordkeeping](#)
- [ILOSHA Reporting Infographic](#)
- [Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [IRMA's Model Policy Templates for all operating departments including:](#)
  - IRMA's OSHA 300 Reporting Guidance
  - IRMA's Hazard Communication Model Policy
  - IRMA's Respiratory Protection Model Policy
  - IRMA's Personal Protective Equipment Model Policy
  - IRMA's Bloodborne Pathogen Model Policy