



# RISK IS REAL

## Mitigating Operational and Legal Risk as Workers Return to Dermatology Practices

### Session #3 Resource List

OSHA Updated Interim Enforcement Response: <https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

OSHA Guidance on Preparing Workplaces for COVID-19:  
<https://www.osha.gov/Publications/OSHA3990.pdf>

OSHA Worker Exposure Risk to COVID-19 Classifications:  
<https://www.osha.gov/Publications/OSHA3993.pdf>

EPA Guidance for Cleaning and Disinfecting: [https://www.epa.gov/sites/production/files/2020-04/documents/316485-c\\_reopeningamerica\\_guidance\\_4.19\\_6pm.pdf](https://www.epa.gov/sites/production/files/2020-04/documents/316485-c_reopeningamerica_guidance_4.19_6pm.pdf)

“Reporting COVID-19 as a Work-Related Illness” article authored by Mary Leigh Pirtle:  
<https://www.bassberryhrlawtalk.com/employers-obligation-covid19-work-related-illness-osha-guidance/>

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Welcome and Thank You for joining us today.  
The broadcast will begin momentarily.



Jennie Hitchcock is the President and co-founder of Compass Healthcare Consulting, a professional services firm that helps healthcare organizations assess and manage a wide range of risk and regulatory issues.



Dawn Cutlan Stetter represents and advises management in all aspects of labor and employment law, including litigation involving employment discrimination, sexual harassment and wage claims.



Mary Leigh Pirtle helps employers navigate complicated and evolving employment law issues. With experience in both traditional labor and employment litigation, Mary Leigh has represented employers against claims ranging from wage and hour violations to EEOC violations.





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## OSHA Interim Enforcement Effective 5/26/2020 until Further Notice

### Written Pandemic Plan




- Incorporate into existing Emergency Action or Infection Control Plan
- vs.
- Develop freestanding plan

### Hazard Assessment

- Incorporate into existing Exposure Control Plan
- COVID Occupational Exposure
- Protocols
- Personal Protective Equipment




### Guidance on Preparing Workplaces for COVID-19








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## OSHA Interim Enforcement


### Worker Exposure




Review of:

1. Medical records related to worker exposure incident(s);
2. OSHA-required recordkeeping; and
3. Any other pertinent information or documentation, including determining whether any employees:
  - have contracted COVID-19
  - have been hospitalized as a result of COVID-19
  - or have been placed on precautionary removal/isolation

### Laboratory Specimens

- COVID positive specimens
- Surface Decontamination Protocols



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## OSHA Interim Enforcement

### Respiratory Protection Program

- Modified Respirator Policies

### Worker Training

- Exposure Prevention
- Pandemic Response

### Personal Protective Equipment

- Documentation efforts to obtain and provide appropriate and adequate supplies of PPE to workers



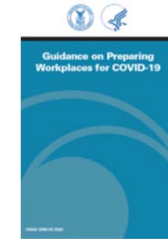
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## OSHA Guidance on Preparing Workplaces for COVID-19

- Engineering controls – reduce hazards without relying on employee behavior
- Administrative controls – require action by workers to minimize hazards
- Personal Protective Equipment (PPE)
- “[I]t is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations.”



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## OSHA Interim Enforcement

### Isolation/Transfer Procedures

- Isolation areas and air pressure monitoring and testing
- Transfer of patients
- Placement of COVID patients – rooms and past thirty days



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## OSHA's Guidance

- First Step - Hazard assessment
- OSHA identifies four classes of occupational exposure to COVID-19:



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### OSHA Job Risk Categories

| LOW  | MEDIUM  | HIGH  | VERY HIGH  |
|--|---|---|--|
| Positions with little or no public or coworker contact | Frequent close contact with public or others who may get infected | High potential for exposure to suspected sources of COVID | High potential for exposure to known COVID sources during specific procedures. |
|  | School workers  | Healthcare workers on suspected COVID patients            | Healthcare workers on known COVID patients                                     |
|  | High population density work (e.g., retail, travel)               | Medical transport workers                                 | Morgue workers   |



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### Limiting Liability – Discrimination

#### EEOC guidance – employers may:

- Ask about COVID-19 symptoms
- Temperature test
- COVID-19 test
- Ask about contact with anyone known or suspected to have COVID-19 (Mar. 27, 2020 EEOC Webinar)
- Not single an employee out, without a reasonable belief based on objective evidence that the employee may have the disease



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### Limiting Liability – Discrimination

- Infectious Disease Preparedness and Response Plan – OSHA says to consider workers’ individual risk factors
  - Older age
  - Chronic medical conditions
  - Immunocompromised conditions
  - Pregnancy
  - And “controls necessary to address those risks”



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### Centers for Disease Control

#### Interim Guidance for Businesses and Employers:

- Reduce transmission among employees
  - Encourage sick employees to stay home
  - Separate sick employees
  - Educate employees
- Maintain healthy business operations
  - Identify a workplace coordinator
  - Flexible sick leave
  - “Consider” establishing policies and practices for social distancing
- Maintain a healthy work environment
  - Additional cleaning/disinfecting
  - Eliminate travel
  - Reduce or eliminate meetings or gatherings



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## Arrival at Workplace

### Temperature Checks:

- Where to be Conducted? Before Entering Facility?
  - Off-the-clock Claims; waiting time? Scan Times (< 10 seconds)?
- If done inside workplace, consider timing after reporting to duty/clocking in
- Temperature Scanning Cameras – Privacy Concerns; Consent?
- Should you ask your Employees to Self-Monitor Temperature Daily?
  - Off-the-clock Claims



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## Density of Work Areas

### Keep Your Employees Socially Distant

- Keep Some Employees Working from Home
- Isolation of Employees – Reconfigure Work Areas; Utilize Unpopulated Space
- Stagger Shifts/Meal Periods to Avoid Overlap With Co-Workers
- Remove Tables and Chairs in Common Areas that Would Allow Close Proximity



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## Arrival at Workplace

### How and Where Do Employees Report to Duty?

- Time Clocks? How to avoid clusters of employees.
- Social Distancing in line for Time Clocks



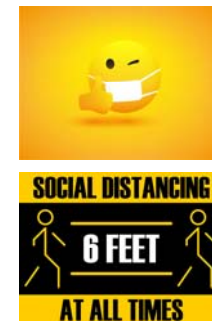
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## Signage in the Workplace

- “Face Covering Zone” in hallways; Face-covered Emoji
- “STOP! Wash Hands Before Opening Refrigerator”
- “STOP! Wipe Down Touchpad Before AND After Use” – Copier, Coffee maker
- “STOP! Use Hand Sanitizer Before Entering Workplace” (If you can provide it)
- Reminders Throughout the Workplace



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### Review Existing Policies

- Leave and accommodation policies
  - Compliance with FFCRA, state, or local laws
  - Disability and religious accommodations
  - Potential suspension of doctor’s note requirement
- Absences and tardiness policies
  - Relax standards to provide for safe commute
  - How to handle employees who refuse to come to work?
- Visitors in the Workplace
  - Restrictions



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### Exposure Control Plan – Exposure Determination

- Before** → **After**
- Exposure Determination (Some and All)
  - Exposure Determination and Risk Classification Permanent vs. Temporary

| Job Title/Classification     | Employees in Title/Class with Occupational Exposure | Permanent Department/Location (s)                      | Exposure Risk Classification for Airborne Infectious Disease (e.g. COVID 19) | Temporary Location During an Infectious Disease Outbreak         | Exposure Risk Classification for Airborne Infectious Disease (e.g. COVID 19) |
|------------------------------|---|--|--|--|--|
|                              |   |  | Medium to High   | Home – Telehealth Clinic/Lab – Patient Care and Laboratory Areas | Clinic - Medium Home - None  |
| General Dermatology Provider | Some <b>All</b> None                                | Clinic/Lab – Patient Care and Laboratory Areas         | Medium to High   | Clinic/Lab – Patient Care and Laboratory Areas                   | Clinic - Medium Home - None  |
| Nurse/Medical Assistant      | Some <b>All</b> None                                | Clinic/Lab – Patient Care and Laboratory Areas         | Medium   | Home – Telehealth Clinic/Lab – Patient Care and Laboratory Areas | Medium   |
| Front Office – Check In/Out  | Some <b>All</b> None                                | Clinic – Front Office                                  | Medium   | Clinic – Front Office Home - Telephones                          | Clinic - Medium  |
| Billing                      | <b>Some</b> All None                                | Clinic – Front Office Clinic – Separate Billing Office | Front Office - Medium Separate Billing Office - Low                          | Clinic – Separate Billing Office Home - Telephones               | Front Office - Medium Separate Billing Office - Low                          |



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### Exposure Control Plan – Sanitation

- Before** → **After (If Changes Permanent)**
- Housekeeping typically refers to work areas
  - Expand housekeeping section
    - Clean and disinfect environmental shared surfaces
    - EPA List N disinfectant



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### Exposure Control Plan – Hazard Assessment

Exposure Determination informs PPE Hazard Assessment:

| Hazard Type                                     | Task and Job Title(s)/Classification                               | Required Personal Protective Equipment |            |                           |                 | Location of Personal Protective Equipment |
|---|--|--|------------|---------------------------|-----------------|---|
|   |  | Type of Gloves                         | Gown (Y/N) | Face/Eye Protection       | Other (Specify) |   |
| Bloodborne Pathogen Airborne Infectious Disease | Routine Surface Cleaning or Disinfection<br>1. All Titles          | Medical or Utility                     | N          | Face Mask and Face Shield |                 |   |
| Bloodborne Pathogen Airborne Infectious Disease | Handling Laundry<br>1. Nurse/Medical Assistant                     | Medical or Utility                     | N          | Face Mask and Face Shield |                 |   |
| Airborne Infectious Disease                     | Patient Check-in/Check out<br>1. Front Office<br>2. Office Manager |  | N          | Face Mask and Face Shield |                 |   |



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## Exposure Control Plan – Airborne Pathogens

**Before**

- Section on tuberculosis
  - TB Testing and related
  - Worker exposure to TB
  - Post exposure protocol

**After**

- Incorporate tuberculosis and COVID-19 into broader airborne pathogen plan
  - COVID and any other testing
  - Worker exposure to COVID
  - Pre-appointment screening

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## OSHA’s recordkeeping requirements

- “As the virus’s spread now slows in certain areas of the country, states are taking steps to reopen their economies and workers are returning to their workplaces. All these facts – incidence, adaptation, and the return of the workforce – indicate that employers should be taking action to determine whether employee COVID-19 illnesses are work-related, especially when an employee has experienced potential exposure both in and outside of the workplace.”
- Until further notice, OSHA will enforce the record keeping requirements for employee COVID-19 illness.
- Exception:
  - Employers with 10 or fewer employees and low hazard industries
    - 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.

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## Emergency Action Plan – Pandemic Plan

**Before**

- Probably didn’t include a plan for a pandemic

**After**

- Include pandemic plan
  - How identified e.g. community transmission
  - Special protocols/checklists for pandemic

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### COVID-19 is a recordable illness if:

- The case is a confirmed case of COVID-19 as defined by the 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

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## When is COVID-19 “Work-related”?

- Exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.
- “Based on the difficulty with determining work-relatedness,” OSHA will exercise discretion to assess employer’s efforts to determine work-relatedness.



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## Evidence of work-relatedness

- Several cases develop among workers in close proximity with no alternative explanation
- Contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 with no alternative explanation
- Job duties include frequent, close exposure to the general public in a locality with ongoing community transmission and with no alternative explanation

### What is an alternative explanation?



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## Reasonableness of the Employer’s Investigation

1. Ask the employee how he believes he contracted the COVID-19 illness.
2. While respecting employee privacy, 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 exposure.
  - Any other instances of workers contracting the illness?
  - Contract tracing?

**BEST PRACTICE:** Record your investigation in writing.

**CAUTION:** Work-relatedness determination should be based on the information reasonably available to the employer at the time. BUT, if the employer later learns additional information, “then that information should be taken into account as well in determining whether an employer made a reasonable work-relatedness determination.”



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## Evidence that NOT work-related

- Only worker 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.
- Close and frequent association with someone (family, significant other, close friend) who:
  - Has COVID-19;
  - Is not a co-worker; and
  - Exposes the employee during the period in which the individual is likely infectious.

**CAUTION:** inspectors will give weight to evidence of causation provided by medical providers, public health authorities or the employee herself.



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## Final Verdict?

- Reasonable and good faith inquiry:
  - Cannot determine whether it is more likely than not that exposure in the workplace played a “causal role” with respect to the case – the employer does not have to report.
- COVID-19 should be coded as a respiratory illness on OSHA Form 300. Remember – employees can voluntarily request his or her name not be entered on the log.



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The Q&A is open and we want to hear from you!



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