

OSHA & COVID-19

Labor & Employment Law Update

By Matthew Horn on March 24, 2020

Our clients continue asking us the same two questions about COVID-19 as it pertains to their obligations under OSHA. We include those questions and our answers below:

1. What does OSHA expect me to do to prevent the spread of COVID-19 to my employees?

Answer: OSHA has provided **guidance** on steps employers can take to prevent the spread of COVID-19 in the workplace. This guidance appears to relate largely to employers outside of the health care industry. Industry associations have also put out their own guidance, including the AGC. The **AGC guidance** provides practical, common-sense advice, including: 1) ensure people who are sick are kept from the site; 2) provide employees with clean, accessible facilities to go to the bathroom and wash their hands (with soap); 3) keep employees spread out; 4) do not require people to meet in large groups; 5) do not maintain a common water cooler or coffee station; and 6) clean and sanitize whenever and to the extent possible.

For those employers in the health care industry and others heavily impacted COVID-19, OSHA has also compiled a **list of Standards that apply to COVID-19**. The most obvious and important Standard relates to providing employees with the PPE necessary to protect them from exposure, including gloves, face and eye protection, and respiratory protection.

2. If one of my employees gets COVID-19, do I need to record or report it to OSHA?

Answer: OSHA has indicated that it will require employers to record and report employee COVID-19 cases in certain circumstances. Three factors must be met in order for an employee case of COVID-19 to apply: 1) an employee has a confirmed case of COVID-19; 2) the case is work-related; and 3) the case involves one or more of the general recording or reporting criteria (i.e. medical treatment beyond first aid, days away from work, hospitalization, death, etc.). As to the second prong, in order for a case to be work-related, the employee has to actually be infected at work—it is not enough that he/she contracts the disease outside of work and displays symptoms at work.

Clearly, this obligation impacts the health care industry the most, since its employees are most likely to contract a confirmed case of COVID-19 at work; however, it has the ability to impact all employers. For those employers in the health care industry, it would seem that the best way to avoid this recording or reporting obligation is to provide employees with the necessary PPE as mandated by OSHA, and for those employers outside of the health care industry, it would seem that the best way to avoid this obligation is to ensure that employees who have COVID-19 are not allowed to work and infect others.

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