



CRISIS PRACTICE

# Coronavirus

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## COVID-19: New OSHA/CDC Guidance For Manufacturing and Industrial Facilities

On May 12, the United States Department of Labor’s Occupational Safety and Health Administration (“OSHA”) and the Centers for Disease Control and Prevention (“CDC”) issued joint “interim” **guidance** for manufacturing and industrial facilities “developing plans for continuing operations in the setting of COVID-19.” Recognizing that the manufacturing work environment, including production floors, assembly lines, and other areas, may pose significant exposure risks to COVID-19, the guidance provides a detailed list of controls and steps manufacturers should implement to minimize workplace risks.

### WHO DOES IT APPLY TO?

The joint guidance is limited to manufacturing industries and industrial facilities. It provides a non-exhaustive list of covered industries, including apparel and footwear, battery manufacturing, chemical manufacturing, concrete and concrete products, fireworks, food processing, lead smelters, lubricant manufacturing, metal manufacturing, plastics industry, furniture manufacturing, automobile manufacturing, the printing industry, pulp, paper, and paperboard mills, the semiconductor industry, textiles, and the wood product industry.

### WHAT DOES IT SAY YOU SHOULD DO?

The guidance encourages employers to do the following:

- Identify a qualified workplace coordinator who will be responsible for creating a COVID-19 risk assessment and control plan.
- Implement engineering controls to reduce the spread of COVID-19, including:
  - Modify alignment of workstations, including along production or assembly lines, to ensure workers are spaced at least 6 feet apart in all directions, if possible.



- Modify workstations so that workers do not face one another.
  - Install markings and signs to remind workers to maintain social distancing at their workstations and during breaks.
  - Use physical barriers and partitions, such as strip curtains, plexiglass, or similar materials, to separate workers, if possible.
  - Consult with an HVAC engineer to ensure adequate ventilation and air quality in all work areas.
  - Place handwashing stations or hand sanitizers with at least 60% alcohol in multiple locations to encourage proper hand hygiene.
  - Add additional clock in/out stations to avoid congregating in those areas and consider touch-free methods or staggering time for workers to arrive/leave.
  - Remove or rearrange chairs and tables, or add partitions to tables, in break rooms.
- Implement administrative controls to promote social distancing:
    - Limit facility access only to essential workers and eliminate non-essential meetings.
    - Encourage single-file movement with 6-foot distance between each worker through the facility, where possible.
    - Designate workers to monitor and facilitate distancing on production or assembly line floors.
    - Stagger shifts to limit the number of employees in the workplace at any given time and consider cohorting workers.
    - Develop and implement plans to continue essential business functions in cases of higher than usual absenteeism.
    - Analyze and consider modifying sick leave policies, incentive programs, and additional flexibilities to ensure sick workers, including asymptomatic workers, stay home and are not in the workplace.
    - Establish a system for employees to immediately alert supervisors if they begin experiencing signs or symptoms of COVID-19.
    - Supplement normal employee training with additional training and information about COVID-19, including recognizing signs and symptoms of infection and ways to prevent exposure.
    - Ensure tools are regularly cleaned and disinfected, at least as often as workers change workstations or move to a new set of tools.

### SHOULD YOU REQUIRE EMPLOYEES WEAR FACE COVERINGS?

Based on the guidance, yes. The guidance recommends workers wear face coverings as a protective measure in addition to social distancing, and face coverings are especially important when social distancing is not possible or feasible based on working conditions. The guidance is clear that cloth face coverings are not PPE and are not appropriate substitutes for PPE such as N95 respirators or medical facemasks in workplaces where such equipment is recommended or required to protect the wearer. Employers should conduct a risk hazard assessment to determine whether PPE is necessary to protect employees. Also, because wearing a single cloth face covering for the duration of a work shift in a manufacturing facility may not be practical (it could become wet, soiled, or otherwise contaminated),



the guidance states employers should provide readily available clean cloth face coverings (or disposable face masks) for workers to use.

### DO YOU NEED TO SCREEN WORKERS FOR COVID-19?

Based on the guidance, yes. The guidance encourages employers to develop and implement a comprehensive screening and monitoring strategy, particularly in areas where community transmission of COVID-19 is occurring. Employers should consider the following:

- Screening workers before entry into the facility.
- Provide verbal screening in appropriate languages to determine whether workers have had symptoms of COVID-19 in the past 24 hours, including cough, shortness of breath, difficulty breathing, fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, and new loss of taste or smell.
- Temperature checks to identify and exclude anyone with a fever of 100.4° or greater.
- Develop criteria for return to work of exposed and recovered workers.
- Ensure screeners are appropriately protected from exposure with PPE (gloves, gown, face shield, and, at a minimum, a face mask) and potential engineering controls (physical barriers or dividers).

### IS THIS AN EMERGENCY TEMPORARY STANDARD?

This interim guidance provides the most detailed COVID-19 recommendations to date for manufacturing and industrial facilities. And while it is described as “guidance,” it is unclear exactly how it will be used by OSHA or what the legal effect, if any, the guidance will have. This joint guidance with CDC is a relative outlier for OSHA. OSHA is an enforcement agency. The CDC is a public health protection agency. It is unclear what force and effect these joint guidance statements will have on later enforcement actions based on recommendations in this publication. There is also the chance that guidance such as this may end up affecting the legal duty of care in common law tort claims arising from COVID-19.

Additionally, this guidance is now the second joint guidance issued by OSHA and CDC containing a robust description of potential engineering controls, among other measures, manufacturers should consider implementing. The other joint guidance—which addressed meat and poultry processing workplaces—has already been used by a federal court to dismiss a worker safety lawsuit based on OSHA’s primary jurisdiction. This is the first broad COVID-19 guidance OSHA has issued that appears to target a broad array of members of general industry. Given the specific recommendations in the publication and the treatment by courts mentioned above of similar joint guidance documents, this “guidance” could be said to have the look and feel of a de facto emergency temporary standard for manufacturing and industrial facilities. As a result, the engineering and administrative controls discussed in the guidance may become tantamount to requirements, not mere recommendations—at this point, we simply do not know.



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