

# Opening the Doors: Overcoming OSHA & Employee Relations Challenges



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# Presenters

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# Overview of Topics

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## Are You Prepared to Open?

- OSHA and Employment Law/HR Issues
- Paycheck Protection Program (“PPP”) and False Claims
  - May 22, 2020
- Contract Issues, Litigation, Insurance, and Bankruptcy
  - May 29, 2020

# Summary of Key OSHA Policies & Procedures

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- Overview of OSHA Guidance
  - General legal obligations of employers with respect to COVID-19
    - General Duty Clause
    - Negligence Exposure
      - Duty and breach of duty
      - Causation
      - Harm
      - = cause of action for negligence (may be superseded by other causes of action in employment area such as worker's comp)
  - COVID-19 Employer reporting and recordkeeping obligations

# OSHA Guidance on Preparing Workplaces for COVID-19

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- Guidance – not a regulation
- Creates basic steps applicable to all businesses
- Guidance exists for some specific businesses
- Classify employees by risk
- Develop an Infectious Disease Preparedness and Response Plan
  - Obligation to keep up to date with state, local and federal guidance documents (See recent state guidelines on reopening certain non-essential businesses)
  - Be ready to implement infection prevention measures
  - Develop policies and procedures for prompt identification and isolation of sick employees
  - Employ Hierarchy of Controls

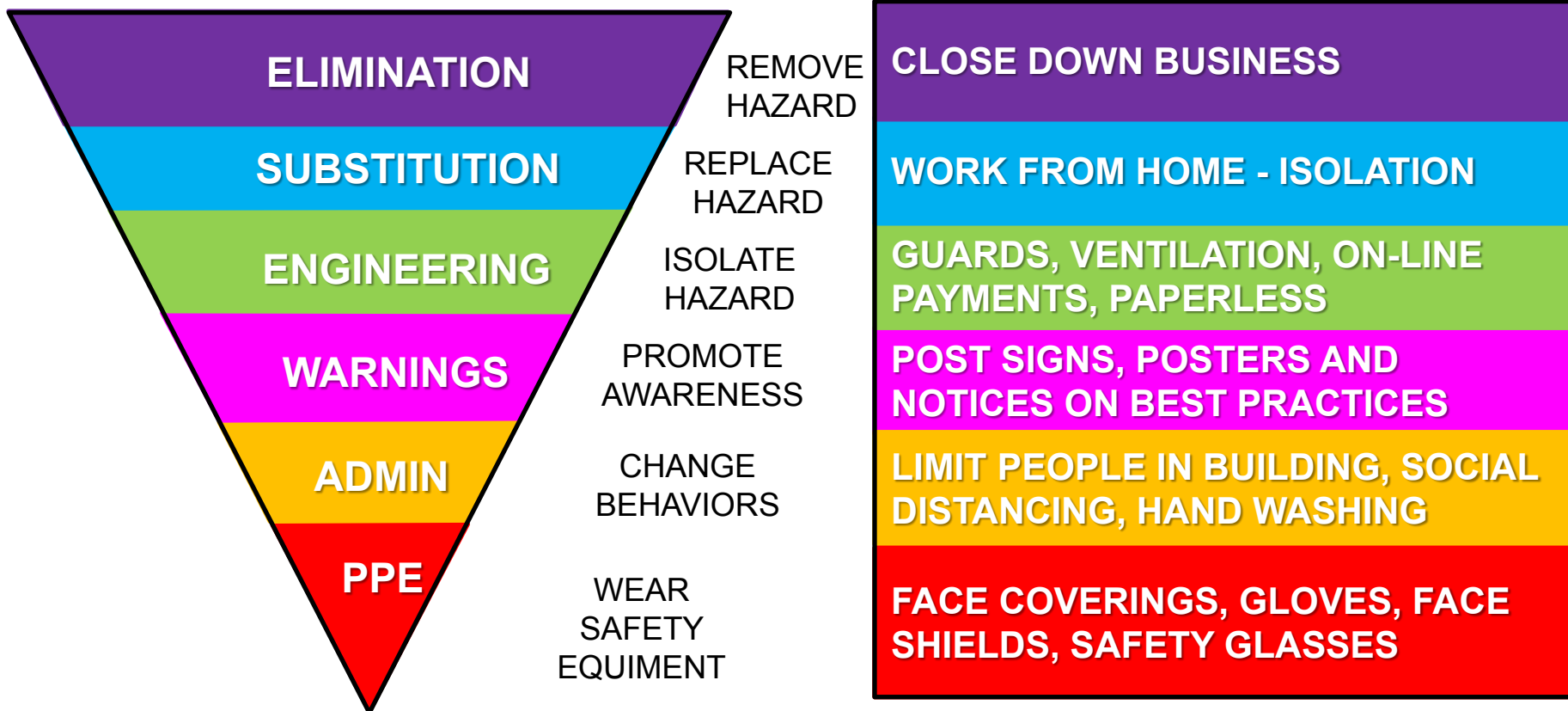
# OSHA Hierarchy of Controls

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- Removing the risk from the workplace is preferred
- Engineering Controls are the most effective – barriers and filters
  - HVAC systems modifications and install high-efficiency air filters
  - Physical barriers
- Administrative controls require action by worker or employer – change in policies and procedures
  - Social distancing at work
  - Alternate worker shifts/ reduce travel / employ video meetings
  - Procedures for identifying and handling sick employees
  - Contact tracing
- PPE – based on employee risk categories

# OSHA Hierarchy of Controls Cont.

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# OSHA General Duty Clause

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- So if it's Guidance, do I have to follow it?
  - Section 5(a)(1) of OSHA, often referred to as the General Duty Clause, requires an employer to “furnish to each of his employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”
  - PPE requirements for certain industries
  - Bloodborne pathogen rules for certain businesses
- And don't forget those negligence and workers comp claims



# OSHA Recordkeeping

- Maintaining OSHA 300 Log (if required)
  - Determination if COVID-19 is “Work-Related”
  - Risk Exposure Level Determination (Low to Very High Exposure)

The image displays three OSHA forms stacked vertically. The top form is OSHA's Form 300, titled "Log of Work-Related Injuries and Illnesses" (Rev. 10/2006). The middle form is OSHA's Form 300A, titled "Summary of Work-Related Injuries and Illnesses" (Rev. 01/2004). The bottom form is OSHA's Form 301, titled "Injury and Illness Incident Report" (Rev. 01/2004). Each form includes a header with the OSHA logo and the U.S. Department of Labor Occupational Safety and Health Administration. The forms contain various sections for recording and reporting work-related injuries and illnesses, including employee information, incident details, and medical care.

# Injury/Illness Recordkeeping

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April 10, 2020

**FOR:**

REGIONAL ADMINISTRATORS  
STATE DESIGNEES

**THROUGH:**

AMANDA EDENS  
Deputy Assistant Secretary

**FROM:**

LEE ANNE JILLINGS, Acting Director  
Directorate of Technical Support and Emergency Management

PATRICK J. KAPUST, Acting Director  
Directorate of Enforcement Programs

**SUBJECT:**

Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)

This memorandum provides interim guidance to Compliance Safety and Health Officers (CSHOs) for enforcing the requirements of 29 CFR Part 1904 with respect to the recording of occupational illnesses, specifically cases of Coronavirus Disease 2019 (COVID-19). This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for updates.

# Injury/Illness Recordkeeping Cont.

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Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if: (1) the case is a confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);[1] (2) the case is work-related as defined by 29 CFR § 1904.5;[2] and (3) the case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.[3] On March 11, the World Health Organization (WHO) declared COVID-19 a global pandemic, and the extent of transmission is a rapidly evolving issue.

In areas where there is ongoing community transmission, employers other than those in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposures at work. In light of those difficulties, OSHA is exercising its enforcement discretion in order to provide certainty to the regulated community.

Employers of workers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Until further notice, however, OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations, except where:

# Injury/Illness Recordkeeping Cont.

1. There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and **WE DIDN'T ESTABLISH SOCIAL DISTANCING**
2. The evidence was reasonably available to the employer. For purposes of this memorandum, examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees. **WE DIDN'T HAVE A SCREENING PLAN**

This enforcement policy will help employers focus their response efforts on implementing good hygiene practices in their workplaces, and otherwise mitigating COVID-19's effects, rather than on making difficult work-relatedness decisions in circumstances where there is community transmission.

CSHOs will generally refer to CPL 02-00-135, *Recordkeeping Policies and Procedures Manual* (Dec. 30, 2004) and CPL 02-00-163, *Field Operations Manual (FOM)* (Sept. 13, 2019), Chapters 3 and 6, as applicable.[4],5] The following additional specific enforcement guidance is provided for CSHOs:

COVID-19 is a respiratory illness and should be coded as such on the OSHA Form 300. Because this is an illness, if an employee voluntarily requests that his or her name not be entered on the log, the employer must comply as specified under 29 CFR § 1904.29(b)(7)(vi).

# Connecticut DECD

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## ***This is the Basis for Your Plan***

- General Criteria
  - Work from home
  - Eliminate all non-essential business travel
  - Distribute health insurance information
  - Control access to external visitors
- Face Covering Requirements
  - Upon entry and in common areas (not office/cubicles)
- Social Distancing Plan
  - Eliminate transmission points
- Frequent cleaning regime (EPA list of disinfection products)
  - “Prohibit using other people’s stuff”
- Increase communication about reducing exposure
- Reporting an Exposure (+ COVID-19)
  - Inform employees of possible COVID-19 exposure (self-monitor)

# Return-to-Work Plan

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- Building Preparation
  - Mechanical system functionality & cleaning
  - Fresh air purge, filter upgrade, focused cleaning
- Workforce Preparation
  - Phased approach
- Facility Access
  - Entry points, protocols, who/what/why
- Social Distancing
  - 6-feet, update room capacity, separation plans
- Cleaning Protocols
  - EPA-approved disinfects, self-clean protocols, reduce touch points
- Communication
  - People need to feel “safe”

## EMPLOYEES, VISITORS, CONTRACTORS, CUSTOMERS, AND SUPPLIERS DAILY SELF-ASSESSMENT PROTOCOL

### Assessment Criteria – As of March 20, 2020

Fuss & O'Neill cares about the safety of you and our company employees. In the interest of ensuring a safe and healthy work environment, we ask that you carefully complete this self-assessment before entering the facility.

#### ARE YOU:

1. An essential employee, vendor, contractor, or other visitor to Fuss & O'Neill who has traveled interstate from a high reporting region and had CLOSE CONTACT\* with others; e.g. New York City, or traveled internationally within the last 14 days..... **YES or NO**
2. An essential employee, vendor, contractor, or other visitor to Fuss & O'Neill with a member of the same household who has returned from a high reporting region; e.g. New York City, or traveled internationally in the last 14 days.

*Note: this does not include travel as part of the commute to/from work.....* **YES or NO**

**If you answer YES to question 1 or 2: We are directing you to remain off the Company's Site in accordance with Connecticut requirements. You are to remain off the Company's site for 14 days starting the day you or your household member arrived back into your home from the high reporting region or country.**

3. An essential employee, vendor, contractor, or other visitor to Fuss & O'Neill who's had CLOSE CONTACT with a person who has been diagnosed with (COVID-19)..... **YES or NO**

**If you answer YES: We are directing you to remain off the Company's Site for 14 days from when you last had contact and follow local regulatory requirements.**

*\*CLOSE CONTACT - people who are within about 6 feet for about 30 minutes or more.*

**With either #1, #2 or #3: If you become diagnosed with COVID-19 Acute Respiratory Disease within the 14 day period, you are to remain off-site and may return when you are free of fever (100.4°F or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 72 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants) and at least 7 days have passed since symptoms first appeared.**

**All other people that don't meet the criteria above should conduct the following self-assessment before coming to work and entering the facility:**

#### DO YOU HAVE:

- Fever (greater than 100.4°F) or
- Signs and symptoms of respiratory or flu-like illness

**If you answer YES: We are directing you to remain off the Company's site. You may return to the site when you are free of fever (100.4°F or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 72 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants) and at least 7 days have passed since symptoms first appeared.**



# OSHA Hazard Assessment

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- Identify Mandatory Personal Protective Equipment (“PPE”)
  - Identify job duties that create an exposure to COVID-19
  - Identify what specific PPE is required to control hazard
    - Who might have an exposure to “other people”
    - Social distancing
    - Determine what PPE must be used
  - Perform Hazard Assessment (Update and revise an old assessment)
    - Previously no gloves – now Nitrile gloves are required
    - Previously open space – now Face shields or coverings are required
  - Perform Employee Training
    - What PPE is required
    - Why is it required
    - How to use/wear PPE
    - What are the limitations



# Respiratory Protection

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- What face coverings are “the Company” providing?
- Ensure that any respirator use will not in itself create a hazard
- Respirators are not to be used if dirty or contaminated
- Usage does not interfere with the employee's ability to work safely
- Provide information in Appendix D – Voluntary Use
  - Any worker who voluntarily uses **any** type of respirator



# Respiratory Protection Cont.

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## *Not All Respirators Are The Same*



Does not contain airborne droplets



Contains airborne droplets

# Respirator FIT Testing

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April 8, 2020

**MEMORANDUM FOR:**

REGIONAL ADMINISTRATORS  
STATE PLAN DESIGNEES

**THROUGH:**

AMANDA EDENS  
Deputy Assistant Secretary

**FROM:**

PATRICK J. KAPUST, Acting Director  
Directorate of Enforcement Programs

**SUBJECT:**

Expanded Temporary Enforcement Guidance on Respiratory Protection Fit-Testing for N95 Filtering Facepieces in All Industries During the Coronavirus Disease 2019 (COVID-19) Pandemic

This memorandum expands temporary enforcement guidance provided in OSHA's March 14, 2020, memorandum to Compliance Safety and Health Officers for enforcing annual fit-testing requirements of the Respiratory Protection standard, 29 CFR § 1910.134(f)(2), with regard to supply shortages of N95s or other filtering facepiece respirators (FFRs) due to the coronavirus disease 2019 (COVID-19) pandemic.

# Respirator FIT Testing Cont.

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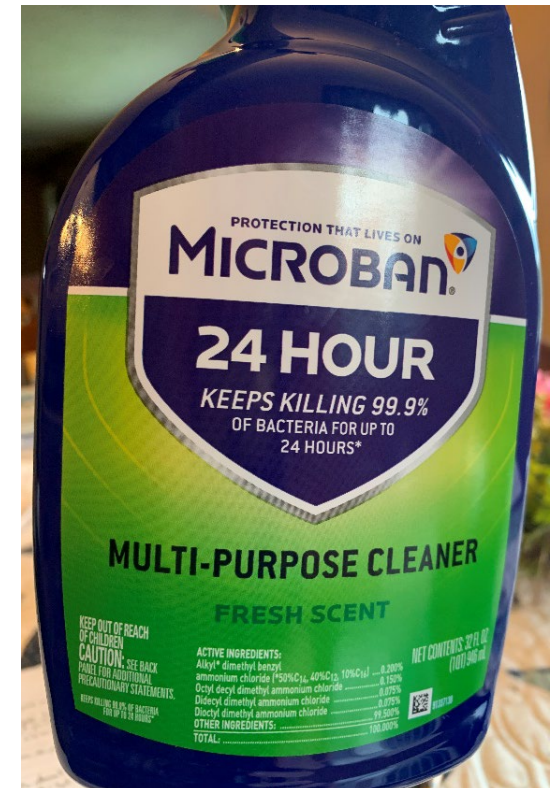
This memorandum expands temporary enforcement guidance provided in OSHA's March 14, 2020, memorandum to Compliance Safety and Health Officers for enforcing annual fit-testing requirements of the Respiratory Protection standard, 29 CFR § 1910.134(f)(2), with regard to supply shortages of N95s or other filtering facepiece respirators (FFRs) due to the coronavirus disease 2019 (COVID-19) pandemic. [1] The March 14 guidance, which applied to healthcare, now applies to all workplaces covered by OSHA where there is required use of respirators. This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for updates.

OSHA field offices will exercise enforcement discretion concerning the annual fit-testing requirements, as long as employers have made good-faith efforts to comply with the requirements of the Respiratory Protection standard and to follow the steps outlined in the March 14, 2020 memorandum. Employers should also assess their engineering controls, work practices, and administrative controls on an ongoing basis to identify any changes they can make to decrease the need for N95s or other FFRs. When reassessing these types of controls and practices, employers should, for example, consider whether it is possible to increase the use of wet methods or portable local exhaust systems or to move operations outdoors. In some instances, an employer may also consider taking steps to temporarily suspend certain non-essential operations.

***“Good Faith Effort” = having a Plan***

# OSHA Hazard Communication

- Written Program
  - New chemical(s) being introduced into the workplace
  - Consumer Product Exemption (may apply)
    - 12 oz. spray bottle or 5-gallon pail
  - How is it being used
    - Following manufacturer criteria
    - Contact time
  - EPA Registered Disinfectant
  - Retain Safety Data Sheet(s)



# 24 HOURS OF PROTECTION FROM BACTERIA GROWTH\* EVEN AFTER MULTIPLE TOUCHES™

▶ SAFE FOR USE ON THESE SURFACE MATERIALS: SEALED GRANITE, SEALED MARBLE, GLAZED TILE, FORMICA®, CORIAN®, AND STAINLESS STEEL  
▶ PREVENTS THE GROWTH OF MOLD AND MILDEW FOR 7 DAYS ON HARD SURFACES

### PRECAUTIONARY STATEMENTS: Hazards to Humans and Domestic Animals

**CAUTION:** Causes moderate eye irritation. Avoid contact with eyes, skin or clothing. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. **FIRST AID: If in eyes:** Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. **If on skin:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice. Have the product container or label with you when calling a poison control center or doctor or going for treatment. For general information on product use, call the National Pesticides Information Center at 1-800-858-7378. For emergencies, call the poison control center at 1-800-222-1222.

**KILLS IN 60 SECONDS: BACTERIA, VIRUSES†:** *Pseudomonas aeruginosa*, *Salmonella enterica*, *Staphylococcus aureus*, *Escherichia coli* O157:H7, \*Human Coronavirus, \*Herpes Simplex virus type 1, \*Herpes Simplex virus type 2, \*Influenza A H1N1<sup>§</sup>, \*Respiratory Syncytial Virus (RSV)

**INSTRUCTIONS FOR USE:** It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Read and follow all directions and precautions on this product label. Not recommended for use on unfinished, oiled, or waxed wood surfaces. For other surfaces, test in an inconspicuous area.

**TO OPERATE:** Turn nozzle to preferred usage.

**TO DISINFECT:** Hard, non-porous non-food contact surfaces: Hold container 6"-8" from surface and spray until thoroughly wet. To kill Bacteria and Cold and Flu Viruses<sup>§</sup>: Let stand for 60 seconds. Then wipe with a cloth. Pre-clean heavily soiled surfaces.

**TO SANITIZE:** Hold container 6"-8" from surface and spray until thoroughly wet. For use on hard, non-porous non-food contact surfaces. Pre-clean heavily soiled surfaces. **To Sanitize:** Let stand 10 seconds. Wipe Clean with a cloth.

**TO SANITIZE FOR 24 HOURS:** Let stand 5 minutes. Allow to air dry. \*Kills 99.9% on *Enterobacter aerogenes* and *Staphylococcus aureus* for 24 hours.

**TO DEODORIZE:** Spray on surfaces as needed.

**TO CLEAN:** Spray on surfaces, allow to penetrate. Wipe clean with a cloth.

**TO PREVENT MOLD AND MILDEW growth:** **On Fabrics:** Apply to fabric surface until wet. Allow to air dry. Repeat every 28 days to inhibit mold and mildew growth. **Pre-clean heavily soiled surfaces. On hard surfaces:** Thoroughly wet surface. Allow to air dry. Repeat every 7 days to inhibit mold and mildew growth. Pre-clean heavily soiled surfaces.

**STORAGE AND DISPOSAL:** Store in original container in areas inaccessible to small children. Keep securely closed. Nonrefillable container. Do not reuse or refill this container. Place in trash or offer for recycling. Contains no phosphates  
Bleach-Free



EPA Reg. No.: 4091-21-3573  
EPA Est. No.: 52379-MI-002



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## EPA Registration

# Amend Existing Policies

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- Update current handbook to reflect the following:
  - Expanded FMLA (child care)
  - Emergency Paid Sick Leave
  - Connecticut Specific COVID-related guidance
  - CDC Return to Work Guidelines

# Amend Existing Policies Cont.

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- COVID-19 Infection Disease Preparedness and Response Plan (“IDPRP”) **Key Issues:**
  - What employees will return first?
  - Social distancing procedures
  - Continuing remote work
  - In-person meetings and conferences
  - Resuming business travel
  - Managing the Spread
  - Coordination with Existing Policies
  - Internal and External Communication
  - Enforcement
  - Reserve Rights to Change Policy



# Amend Existing Policies Cont.

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- Determining Which Employees Return First
  - Groups, shifts, commonality
  - Notify employees of return to work obligations and to perform their duties
  - Consider phased reopening logistics:
    - Groups
    - Shifts
    - Remote workers
    - Split duties
    - Revised schedules to limit capacity (social distancing)
  - Limit access to workspaces outside

# Amend Existing Policies Cont.

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- Social Distancing Procedures
  - CDC Guidelines
  - OSHA Guidelines
  - Local, State, and Federal Regulations
  
- Cleaning and Disinfecting Standards
  - CDC Guidelines
  - OSHA Guidelines
  - EPA Guidelines
  - Local, State, and Federal Regulations

# Amend Existing Policies Cont.

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- Continuing Remote Work – Teleworking Policy
  - Set expectations
  - Communication with supervisors
  - Telework is not a right, but rather a solution aimed at employer needs

# Amend Existing Policies Cont.

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- In-person meetings
- Client and customer visits
- Resuming business travel

# Amend Existing Policies Cont.

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- Managing the Spread:
  - Know the CDC Guidelines
  - Encourage “Stay at Home When Sick” Mentality
  - Protocols When Entering the Workplace
  - Employees with COVID-19 who have home-isolated
  - Employees with no COVID-19 symptoms, but have tested positive and home-isolated

# Amend Existing Policies Cont.

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- Managing the Spread:
  - Know the CDC Guidelines
  - Encourage the “Stay at Home When Sick” Mentality
    - “High-risk” groups
    - Over age 65
  - Protocols When Entering the Workplace
    - Consult [OSHA](#), [EEOC](#), [CDC](#), and [DECD](#) Guidance
    - Devise a plan that works for **YOU**

# Amend Existing Policies Cont.

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- Managing the Spread:
  - People with **COVID-19** who have stayed home (home isolated) can leave home under the following conditions:
    - **If you have not had a test** to determine if you are still contagious, you can leave home after these three things have happened:
      - You have had no fever for at least 72 hours (that is three full days of no fever **without** the use of medicine that reduces fevers) **AND**
      - Other symptoms have improved (for example, cough or shortness of breath have improved) **AND**
      - At least 10 days have passed since your symptoms first appeared
    - **If you have had a test** to determine if you are still contagious, you can leave home after these three things have happened:
      - You no longer have a fever (**without** the use of medicine that reduces fevers) **AND**
      - Other symptoms have improved (for example, cough or shortness of breath have improved) **AND**
      - You received two negative tests in a row, at least 24 hours apart. Your doctor will follow [CDC Guidelines](#).
  - Employees who have been exposed to those with COVID-19
    - Treat employee as if employee had a positive case

# Amend Existing Policies Cont.

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- Managing the Spread:
  - **People who DID NOT have COVID-19 symptoms, but tested positive and have stayed home (home isolated)** can leave home under the following conditions:
    - **If you have not had a test** to determine if you are still contagious, you can leave home after these two things have happened:
      - At least 10 days have passed since the date of your first positive test **AND**
      - you continue to have no symptoms (no cough or shortness of breath) since the test.
    - **If you have had a test** to determine if you are still contagious, you can leave home after:
      - You received two negative tests in a row, at least 24 hours apart. Your doctor will follow [CDC guidelines](#).



# Amend Existing Policies Cont.

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- Managing the Spread:
  - Contact Tracing Key Concepts:
    - Trace and monitor contacts of infected people. Notify them of their exposure.
    - Support the quarantine of contacts. Help ensure the safe, sustainable and effective quarantine of contacts to prevent additional transmission.
    - Expand staffing resources. Contact tracing in the US will require that states, tribes, localities and territorial establish large cadres of contact tracers.
    - Use digital tools. Adoption and evaluation of digital tools may expand reach and efficacy of contact tracers.
  - <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/contact-tracing.html>

# Amend Existing Policies Cont.

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- Coordination with Existing Policies:
  - Focus on FFCRA and PTO:
    - Employees unable to work (including at home) may be eligible for Emergency Paid Sick Leave (“EPSL”) and/or Expanded FMLA under the FFCRA in addition to, or concurrently with, existing PTO.
    - After exhausting FFCRA leave, employees may use other available PTO or leave.
      - Example 1 (EPSL): Employees who have been ordered to quarantine and/or isolate at home because they have COVID-19 symptoms may use any other PTO after using all available EPSL.
      - Example 2 (EFMLA): Employees who have been ordered to quarantine or isolate, who are not symptomatic, employers may permit individuals to supplement their EFMLA (for child care purposes only) with other PTO (non-sick time PTO) but cannot require them to.

# Amend Existing Policies Cont.

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- Internal and External Communication:
  - Change in Policy
  - Positive Tests
  - Contact Tracing
  - Complaints

# Amend Existing Policies Cont.

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- Enforcement:
  - Guidance is rapidly changing and evolving
  - Designate a person per team to monitor guidance from state and local officials (CDC, DECD, OSHA, and EEOC)
  - Have a process to enforce your rules

# Amend Existing Policies Cont.

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- Reserve Rights to Change Policy:
  - Federal, State and Local Regulation Changes
  - Business situations change
  - Health and Safety are the priority
  - Buy-in needed from everyone

# Disability-Related Inquiries

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- Question: How much information may an employer request from an employee who calls out sick?
  - Limited to duration of pandemic
  - Employers may ask about symptoms related to COVID-19 (CDC)
    - Fever
    - Cough
    - Shortness of Breath
    - Chills
    - Repeated shaking with chills
    - Muscle Pain
    - Headache
    - Sore Throat
    - Loss of Taste or Smell

# Disability-Related Inquiries Cont.

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- Question: What can an employer ask an employee about his/her health before returning to the workplace?
  - Employer may ask questions about recovery (i.e., timing, symptoms)
  - CDC has provided guidance:
    - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>
  - Recommended: For persons recovering from COVID-19 illness, CDC recommends that isolation be maintained for at least 10 days after illness onset and at least 3 days (72 hours) after recovery
    - Illness onset is defined as the date symptoms begin
    - Recovery is defined as resolution of fever without the use of fever-reducing medications with progressive improvement or resolution of other symptoms
    - Ideally, isolation should be maintained for this full period to the extent that it is practicable under rapidly changing circumstances
  - Employer may ask for doctor's note, may be difficult to obtain

# Disability-Related Inquiries Cont.

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- Question: Can an employer take body temperatures before permitting employees to enter the workplace?
  - Measuring body temperature is a medical examination
  - Generally, under ADA/CFEPA medical exams must be job-related and consistent with business necessity
  - Relaxed during pandemic
  - Employers may measure employees' body temperature (least invasive way, discrete manner, confidential records)
  - Employers should be aware that some people with COVID-19 do not have a fever
  - Employers can send employees with fever home
  - CDC recommends requiring employees with just a fever to be fever free for 3 days before returning



# Disability-Related Inquiries Cont.

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- Question: Can an employer require a COVID test before allowing an employee to return to work?
  - Yes, the EEOC says COVID tests are considered job-related and a business necessity because COVID-19 poses a direct threat
  - Employers must use accurate and reliable tests
  - False-positives
  - Employees still should observe infection control practices
    - Social distancing, regular handwashing, and other measures

# Disability-Related Inquiries Cont.

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- Question: Is a doctor's note sufficient to allow an employee to return to work? Should I even ask for one?
  - Yes. Such inquiries on account of COVID-19 are permitted
  - Consider alternative approaches such as form, stamp or email in order
  - Do not rely on the doctor's note alone
  - Implement sound CDC infection control practices

# Disability-Related Inquiries Cont.

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- Question: What if I have an employee who refuses to return to work?
  - Oral and written communication with your employees as you plan reopening is critical
  - Understand why the employee refuses to return to work
  - Fear of infection alone is insufficient
  - Employee's refusal meets FFCRA criteria
    - Paid Sick Leave
    - EFMLA
  - Employee's fear is related to existing physical or mental impairment
    - Serious Medical Condition – regular FMLA qualified?
  - Unemployment compensation may be awarded if work is not sustainable for employee
    - Factual determination after hearing with CT DOL

# Confidentiality of EE Information

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- Medical information must be stored separately from personnel file (See ADA; Conn. Gen. Stat. Section 31-128(c))
- Protect confidentiality even when contact tracing
  - Solutions: Group Employees
- Follow OSHA Recordkeeping guidelines

# Reasonable Accommodations

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- Employers obligation to engage in informal interactive process remains
- Unclear at this time whether COVID-19 is or could be a disability under ADA/CFEPA
- Temporary incapacitations (e.g. broken leg) can require accommodations
- At the workplace/teleworking
- Return to work physically
- Modified protective gear
  - CT EX Order 7bb and DECD guidelines for masks – medical conditions

# Employee Discipline

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- Be prepared to discipline employees consistent with existing rules, policies and procedures
- No retaliation
  - By other employees
  - By employer. Don't discriminate for being sick or taking entitled leave.
- Balancing Act:
  - Awareness of EE Health and Safety Concerns
  - Don't let employee unreasonably impair return to business operations with unreasonable or unwarranted demands

# Final Thoughts

Are You Ready to Open?

# Questions



# Contact Us

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**Adam Boston, Esq.**

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# OSHA-Related References

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