

April 28, 2020

OSHA Issues Guidelines for the Meat Industry—All Employers Should Review

On Sunday, April 26, the Centers for Disease Control (CDC) and the Occupational Safety and Health Administration (OSHA) jointly issued interim guidance on COVID-19 for meat and poultry processing workers and employers. The document directs that all meat and poultry processing facilities developing plans for continued operations where COVID-19 is occurring among workers or the surrounding community should:

1. Work with appropriate state and local public health officials and occupational safety and health professionals;
2. Incorporate relevant aspects of CDC guidance, including but not limited to the new document and the CDC's critical infrastructure guidance; and
3. Incorporate guidance from other authoritative sources or regulatory bodies as needed.

The following are actions employers should strongly consider:

Appoint a COVID-19 Response Coordinator: The guidelines state that employers should establish a qualified workplace coordinator (e.g., the safety director) who will be responsible for COVID-19 assessment and control planning. All workers should be notified who that coordinator is and be able to contact them.

Contact with Health Professionals: The guidelines state that facility management should reach out to state and/or local public health officials and occupational safety and health professionals, and establish ongoing communications to make sure they are getting relevant and up-to-date information concerning COVID-19. The guidelines state this recommendation more than once. Employers who have not gone outside of their own organization for assistance from public health, medical, and/or industrial hygiene professionals may be viewed by OSHA as failing to meet their general duty

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to provide a safe workplace for workers. While many employers may have their own safety and health professionals on staff, consider that those individuals were probably already busy before the pandemic, and in most cases have not studied disease and infection control practices.

Perform an Assessment/Develop a Control Plan: The guidelines call for worksite assessments to identify COVID-19 risks and prevention strategies. They also specify that as part of these assessments, facilities should consider the appropriate protocol for testing and workplace contact tracing (i.e., identifying person-to-person spread) of COVID-19–positive workers in a worksite assessment.

Historically, contact tracing was the domain of public health officials. In fact, as the pandemic was starting, initial guidance suggested that employers should not be engaging in contact tracing. This represents a threshold shift in thinking, obviously due to the recognition that public health officials are overwhelmed. One of the main reasons the guidelines suggest employers work with public health officials and safety and health professionals is to ensure that employers will understand how to properly execute contact tracing, which is something completely new to most safety directors.

Although the guidelines do not specifically state that assessments and control plans should be *in writing*, they should be. There is no doubt that if an OSHA complaint triggers an inspection, the inspector will ask for documentation of the employer's assessment process and control plan.

The Control Plan Should Follow a Hierarchy of Controls: The control plan discussed in the guidelines follows a format generally recognized by most safety and health professionals who have been involved with controlling air contaminants such as lead, silica, or asbestos. These guidelines are based on an approach known as the *hierarchy of controls*. This *hierarchy of controls* groups actions based upon their effectiveness.

- First, engineering controls must be considered. Engineering controls are those things which eliminate a hazard or process.
- Second, administrative controls are used to remove those things that cannot be solved by engineering. Administrative controls generally do not get rid of the hazard or process, but rather limit exposure to it.
- Third, personal protective equipment is the last line of defense, where the employer can neither eliminate the hazard nor keep the employee away from it.

The new guidelines discuss engineering, administrative, and personal protective equipment controls in more detail. Some of the controls identified include:

- Designing workstations to maintain six feet of distance.
- Displaying markings and signs to remind workers to maintain distance.
- Installing physical barriers such as strip curtains, plexiglass, or similar material to separate workers from each other.
- Consulting heating, ventilation, and air conditioning engineers to ensure adequate ventilation.

- Eliminating personal or pedestal fans that blow air from one worker into the breathing zone of another.
- Placing hand-washing stations and sanitizer in multiple locations near employees, for ready access.
- Managing pinch points where employees may congregate (time clocks, doorways, restrooms).
- Removing and rearranging tables and chairs in breakrooms to increase distancing.
- Staggering start times and shifts to limit exposure.
- Using outside tents for break and lunch areas.
- Encouraging single-file movement through the facility.
- Staggering break times to allow for bathroom and breakroom use, spread out through the shift.
- Encouraging workers to avoid carpooling. This may require increasing parking space.
- Encouraging workers who must share car space to wear cloth masks.
- Cohorting workers into groups and limiting contact between cohort groups.
- Implementing policies about coming to work when exposed or with symptoms of illness.
- Analyzing sick leave policies to make sure workers do not come to work based upon economic or disciplinary pressures.
- Evaluating flexible benefit policies such as allowing employees to donate sick leave to each other.
- Using cloth face coverings where social distancing is not feasible based on working conditions.
- Educating and training workers on the measures being taken and their role in compliance.
- Providing signage and training understandable by employees (*i.e.*, language and literacy considerations).

These are some of the concepts discussed in the OSHA guidelines, but they are not the only engineering, administrative, or personal protective equipment controls available. Again, this *hierarchy of controls* should be included in an overall assessment of risk and written control plan. The control plan and assessments should then be updated periodically based on changing conditions.

While these guidelines are specifically directed at the meat industry, there are other industries that share similar practices, such as working close together, carpooling, shared breakrooms, and long hours. It is likely that OSHA will apply these principles outside of the meat industry or adopt similar guidelines for other industries.

The Occupational Safety and Health Act contains a “general duty clause” which requires all employers to maintain a workplace free of recognized hazards that may cause death or serious bodily

injuries. Employers can be cited under the general duty clause for failing to respond to the risk of COVID-19, while operating during a pandemic. Adopting measures identified above provides a defense to an OSHA citation or other legal actions that may be brought.

It is likely that companies will see an increase in government oversight and legal actions in the coming months. In the food industry, such actions can be damaging to the company brand and reputation. For example, a recent lawsuit filed by a public nonprofit group against a plant in Missouri resulted in a temporary restraining order being issued against the company by a federal court. A good assessment and control plan that is being followed will likely prevent government penalties or lawsuits over company practices, or at least provide a strong defense if such actions are pursued.

For additional information or assistance with developing an assessment and infection control plan, and identifying qualified workplace health professionals to assist with these measures, we encourage you to reach out to your Michael Best attorney, or Charles Palmer and Denise Greathouse.

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