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OSHA Issues New COVID-19 Guidance for the Construction Industry

As states begin to ease COVID-19 restrictions and businesses return to work, having a well thought-out return to work plan is critical. Last week, the Occupational Safety and Health Administration (OSHA) provided updated recommendations for how the construction industry should return to work (or continue working) amongst concerns over COVID-19. The updated OSHA guidance is general but provides a solid framework for construction employers to evaluate site safety and determine when to implement exposure prevention measures. Please visit the Michael Best Return to Work Strategy Center and our COVID-19 Resource Center for additional information. It is also important to note that the new OSHA guidance does not address how to react to a suspected or confirmed case of COVID-19 within your workforce. For more information on the proper response to a confirmed or suspected case of COVID-19 on a jobsite, please review this previously published Client Alert.

The newly released OSHA guidelines are nonbinding and primarily address indoor construction work. Although employers are not under a legal duty to abide by this OSHA guidance, it is recommended to follow these OSHA guidelines since they are consistent with an employer's general duty to provide a hazard-free work environment pursuant to Section 5 of the Occupational Safety and Health Act of 1970. Like other OSHA guidance, OSHA provides a framework by which employers may classify construction work into four distinct exposure risk categories:

Very High – This risk category is “not applicable for most anticipated work tasks” in construction. Assumedly, this classification is more appropriate for those working directly with individuals known to have COVID-19.

High – High exposure risk work includes “entering an indoor work site occupied by people such as other workers, customers, or residents suspected of having or known to have COVID-19, including when an occupant of the site reports signs and symptoms consistent with COVID-19.

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Medium – Medium exposure tasks require workers to be within six feet of one another and/or require workers to be in close contact with “customers, visitors, or members of the public.”

Low – Low exposure tasks allow employees to remain further than six feet apart and involve little contact with customers, visitors, or members of the public.

Generally, OSHA recommends that non-essential work falling within the higher risk categories be delayed, if possible, until it can be performed under safer conditions.

When workers will be working indoors in a high exposure risk environment, OSHA recommends engineering control measures to physically block the spread of COVID-19. Employers should ensure that a physical barrier is present to separate workers from any occupant suspected of having or known to have COVID-19. This barrier can be a closed door, wall, or erected plastic sheeting.

OSHA’s recommended administrative control measures for limiting the risk of exposure primarily include screening questionnaires and bolstered employee training. When performing essential, urgent, or emergency construction work indoors, OSHA recommends screening the work site occupants to determine 1) whether any occupant is under quarantine or isolation due to a confirmed case of COVID-19, and 2) whether any occupant is suffering from flu-like symptoms to which your employees might be exposed. If you answer “YES” to either question, engineered control measures are recommended to physically prevent transmission.

OSHA’s recommended training regime asks employers to train employees on the following topics:

- The signs and symptoms of COVID-19 and how the disease is spread, including the fact that people can be infected and spread the disease without showing signs or symptoms.
- Appropriate social distancing and hygiene practices, which include maintaining 6 feet of distance between employees, washing hands frequently, properly covering coughs and sneezes.
- The benefits of driving to work sites or parking areas individually and minimizing carpooling.
- The proper use and disposal of masks and other COVID-19 related PPE, and the necessity of continuing proper utilization of construction related PPE.
- The importance of staying home when sick.
- The proper use of Environmental Protection Agency-approved cleaning supplies to sanitize workspaces. It’s important to note that the use of chemicals triggers additional hazard communication and training obligations.
- The need to report safety and health concerns to a supervisor.

OSHA recommends several other safe work practices that every contractor should consider. Because projections on how quickly COVID-19 will spread post lockdown are hazy at best, these safe work practices should be appropriate to incorporate into your written standard operating procedures (SOP’s):

- Screen work site visitors.

- Stagger or alternate work schedules.
- Identify choke points (hallways, elevators, break areas) and implement policies to maintain social distancing.
- Institute rigorous housekeeping and sanitization policies.
- Keep toolbox talks short and outdoors if possible (don't forget to enforce social distancing).
- To the extent possible, ensure that shared spaces in the construction area have good air flow.
- Provide adequate handwashing facilities and ensure toilets and frequently touched items are regularly cleaned.

The topic of masks and face coverings warrants individual mention. OSHA recommends that workers wear a cloth face covering before entry into home environments or areas where construction is ongoing in an occupied building. Employers who determine that cloth face coverings are needed because social distancing is not possible, or in order to comply with state or local requirements, should ensure that cloth face coverings fit snugly, include multiple layers of fabric, allow for breathing without restriction, remain clean and unsoiled, and that replacement face coverings are readily available. OSHA stresses that non-N95 masks, and cloth face covering are **not** appropriate substitutes for PPE. To the extent possible, OSHA recommends the use of engineering and administrative control measures to lessen the daily requirements for N95 respirators and other PPE in short supply. Ideally, employers can implement measures to reduce the requirement for N95 respirators during normal working conditions, resulting in the increased availability of N95 respirators should a worker encounter a respiratory hazard or a situation of heightened COVID-19 exposure.

In conclusion, the released OSHA guidance is a starting point for your return to work strategy. However, no two projects are the same so each return to work strategy should be carefully reviewed by a safety consultant and/or your attorney. Michael Best's Construction, Real Estate, and Workplace Safety attorneys are here to help you navigate these challenging times. Please contact any member of our team for assistance

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