

Employment Law Update: The Four Classifications of Potential Risk on OSHA's Occupational Risk Pyramid; Additional Guidance for Employers of Critical Infrastructure Workers

The development of a COVID-19 response plan is critical to an employer's effective response to the pandemic. The Occupational Safety & Health Administration (OSHA) has provided specific and comprehensive recommendations to employers based upon its employees' potential risk of exposure to the virus. These recommendations are set forth in OSHA's Occupational Risk Pyramid for COVID-19, which classifies jobs according to their respective levels of exposure risk.

Additionally, on April 8, 2020, OSHA published additional guidance for employers of critical infrastructure workers, which supplements OSHA's **March 9, 2020 guidance** to employers on reducing the community spread of COVID-19 in the workplace.

OSHA's COVID-19 Occupational Risk Pyramid

The COVID-19 Occupational Risk Pyramid identifies four classifications of potential risk - Low Risk, Medium Risk, High Risk, and Very High Risk. These classifications are based on the type of industry, the need for contact within 6 feet of individuals with confirmed or suspected COVID-19, and other pertinent factors. OSHA then provides recommendations for changes to an employer's existing workplace controls based on where a particular job falls on the Risk Pyramid.

Workplace controls are organized into four broad categories:

Recommendations for Jobs with Low Risk of Exposure

Low Risk jobs do not require contact with individuals with confirmed or suspected COVID-19. These jobs require minimal occupational contact with the general public and other coworkers. Consequently, OSHA does not recommend any additional engineering and administrative controls beyond remaining abreast of new and developing updates on the pandemic and maintaining effective communication with employees. OSHA further does not recommend PPE for employees in the Low Risk category beyond that necessary to complete their job duties.

Recommendations for Jobs with Medium Risk of Exposure

Medium Risk jobs require frequent and/or close contact with individuals who may be infected with COVID-19 but who are not confirmed or suspected to have COVID-19. Employees in this category may have frequent contact with travelers returning from international locations with widespread COVID-19 transmission. In areas where there is ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, some high-volume retail settings).

OSHA recommends that employers implement additional engineering controls for jobs in the Medium Risk category, including installing physical barriers such as clear plastic sneeze guards, where feasible. It is also recommended that employers implement additional administrative controls such as:

OSHA recommends that employers select required PPE based upon the relative risk of exposure and work task. OSHA provides that Medium Risk jobs may require some combination of gloves, a gown, a face mask, and/or a face shield or goggles.

Recommendations for Jobs with High or Very High Risk of Exposure

These jobs exist in workplaces on the frontlines of the national effort to combat the pandemic.

A Very High Risk of exposure exists for medical personnel and staff at hospitals and healthcare facilities involved in the treatment of individuals with confirmed COVID-19. This group also includes morgue workers performing autopsies on the bodies of individuals with confirmed or suspected COVID-19 infection at the time of death.

A High Risk of exposure exists in jobs and workplaces on the close fringes of the national effort to combat the virus, including healthcare delivery and support staff, medical transport workers that have moved individuals with confirmed or suspected COVID-19, and mortuary workers handling the bodies of individuals with confirmed or suspected COVID-19 infection.

For jobs within the High Risk and Very High Risk categories, OSHA recommends the following engineering controls:

As for administrative controls, OSHA recommends that healthcare employers follow its existing guidance for identifying and isolating individuals with confirmed or suspected COVID-19, in addition to the following:

OSHA's PPE guidelines for employers on the High and Very High Risk end of the Occupational Risk Pyramid are extensive. OSHA requires all employers to supply employees working within these jobs with gloves, face shield or goggles, and either a face mask or a respirator, depending on their respective job tasks and exposure risks. Personnel working directly with COVID-19 patients must be supplied with respirators.

In response to the national shortage of N95 respirators, OSHA issued a March 14, 2020 memorandum to employers in the healthcare industry. To conserve N95 respirators, OSHA has temporarily relaxed its requirements for employers to conduct initial and ongoing fit testing for respirators. Employers can also provide employees with another respirator of equal or higher protection in certain situations.

On April 3, 2020, OSHA issued another memorandum encouraging employers to reassess their existing engineering controls to prioritize conservation of N95 respirators, including allowing the use of disposable N95 respirators under specific circumstances.

OSHA's Interim Guidance for Critical Infrastructure Workers

On April 8, 2020, OSHA issued **additional guidance** for employers managing critical infrastructure employees, allowing them to return to their jobs more quickly following exposure to individuals with confirmed or suspected COVID-19.

OSHA defines critical infrastructure workers as including personnel in 16 different sectors of work including:

Although the CDC previously recommended that workers remain home for a 14-day period after exposure or potential exposure to COVID-19, this new interim guidance allows workers to return to work if they do not have symptoms and follow the proper precautions. These precautions include:

If a critical infrastructure employee falls ill on the job, they should be sent home immediately. Afterward, the employee's workspace should be thoroughly cleaned and disinfected. Additionally, any individuals known or suspected to have been in contact with the employee should be notified of potential exposure to the virus. Employers should, however, be careful not to violate the ADA's confidentiality provisions by keeping the name of the infected employee confidential. Additional guidance to employers on the ADA's confidentiality provisions during the pandemic was covered in our **March 24, 2020** and **April 7, 2020** Client Alerts.

Finally, OSHA further recommends the following practices for critical infrastructure employees:

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