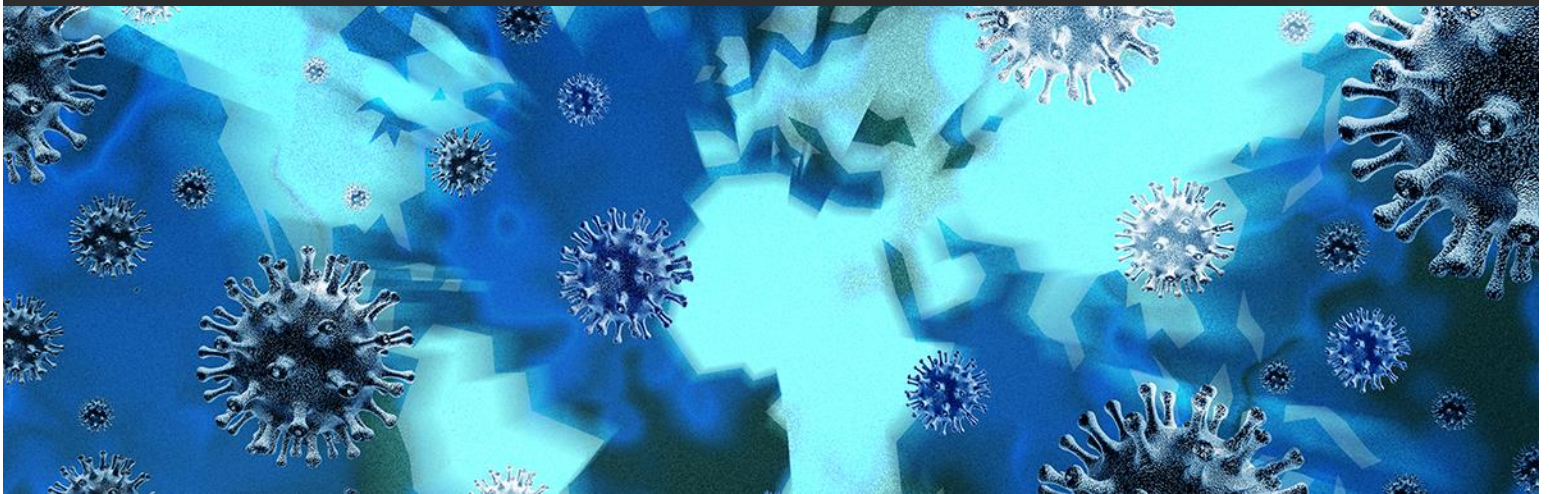


**Alert | Health Emergency Preparedness Task Force:  
Coronavirus Disease 2019**



**March 25, 2020**

## **Coronavirus Disease 2019 and the Occupational Safety and Health Act: OSHA Update No. 2 – Essential Workers**

Our [first Alert, published on Jan. 31, 2020](#), provided general information on the Occupational Safety and Health Administration (OSHA) requirements and steps for employers to consider as the Coronavirus Disease 2019 (COVID-19) was just starting to appear in the United States, and before work shut down and shelter orders were in place. This Update will provide additional information to be considered by employers of essential workers who are required to work. It will address the Federal OSHA standards that apply to workplace safety and recording requirements and the Cal-OSHA standard for Aerosol Transmissible Diseases, which is applicable to COVID-19.

Federal OSHA has three primary requirements that come into play for employers addressing the spread of the COVID-19 virus: (1) the general duty clause; (2) personal protective equipment; and (3) recording and reporting requirements.

Federal OSHA does not have a standard that directly addresses the spread of aerosol transmissible diseases such as COVID-19, and in an enforcement action, Federal OSHA may rely upon the general duty clause of the OSH Act. The general duty clause is used when there is no standard that addresses the specific hazard at issue and is often used in cases of worker fatalities. It states that “[e]ach employer shall 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.” OSHA’s

website indicates that the general duty clause would apply and has published a [Guidance for Preparing Workplaces for COVID-19](#). The federal guidance is similar to the Cal-OSHA requirements, which are discussed below, and employers may do well to consider both in determining the extent of their obligations under the general duty clause.

OSHA's Personal Protective Equipment (29 CFR 1910 Subpart I) standard requires employers to provide gloves, eye and face, and respiratory protection. OSHA has issued [enforcement guidance to its regional offices to address the shortage of the N95 filtering facepiece respirators](#). The guidance states that all health care providers that are providing direct care of patients should be practicing infection control procedures, including engineering and administrative controls, work practices and the proper use of PPE. In order to help alleviate the shortage of N95 masks, OSHA is exercising enforcement discretion and allowing employers to avoid the annual fit testing for respirators as long as they take other actions and show a good faith effort to comply with the PPE standard.

OSHA's Recording and Reporting standard (29 CFR 1904) requires employers to *record* work-related injuries and illnesses and *report* to OSHA within 24 hours of learning of an employee hospitalization and within eight hours of learning of an employee death. OSHA's recent guidance for complying with the standard states a case may be recordable if it is a confirmed case, it meets the other criteria for recording (e.g., medical treatment, days away from work) and is work-related. There are two aspects to "work related": (1) the illness itself, and (2) the means by which it was acquired. The common cold and flu are not work-related, but other aerosol transmissible illnesses may be. To be work-related the illness had to be acquired because of work-related duties. Three examples: (1) a worker with flu-like symptoms misses days at work, seeks medical treatment, but the diagnosis is common flu – not recordable; (2) an accountant with flu-like symptoms misses days at work, seeks medical treatment, and the diagnosis is COVID-19 – not recordable because the illness was not acquired as a result of their job duties; and (3) an emergency medical technician misses days at work *or* seeks medical treatment, and the diagnosis is COVID-19 – recordable because their acquisition was most likely related to their job duties.

For employers in California, [Cal-OSHA Aerosol Transmissible Diseases \(ATD\) Standard](#) (Cal Code Regs. tit. 8, § 5199) is applicable to COVID-19. Cal-OSHA has published a [guide to compliance](#) similar to the federal guide, but because California has a standard, it is more comprehensive, and employers outside of California may want to consider it as a resource to meet their obligation under Federal OSHA. The California standard applies to hospitals, medical offices, and other health care facilities, medical transport, labs, and public facilities such as jails and shelters. The standard requires employers to create an exposure plan which includes a list of all high-hazard procedures, tasks which require respirators, source control measures, and procedures for communicating and training. The employer must use engineering and work practice controls to minimize exposure to ATDs, use PPE, and develop decontamination procedures. Work practices may include, but are not limited to, handwashing and gloving procedures; the use of anterooms to provide patient separation; and cleaning and disinfecting contaminated surfaces and articles. The standard has specific requirements for laboratories, respiratory protection, medical services, training and recordkeeping.

The [Federal OSHA website](#) and the [Cal OSHA website](#) are resources for employers attempting to comply with the legal requirements as well as all employers with a general interest in keeping their work sites safe and employees from being exposed to COVID-19.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

## Author

This GT Alert was prepared by:

- [Michael G. Murphy P.E.](#) | +1 407.999.2509 | [murphymg@gtlaw.com](mailto:murphymg@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>7</sup>Houston. Las Vegas. London. <sup>8</sup>Los Angeles. Mexico City. <sup>9</sup>Miami. Milan. <sup>9</sup>Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. <sup>∞</sup>Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup>Tokyo. <sup>9</sup>Warsaw. <sup>-</sup>Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>-</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>+</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>»</sup>Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>‡</sup>Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>-</sup>Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*