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COVID-19 Update: Health & Safety: Protecting Your Workplace

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Presenter



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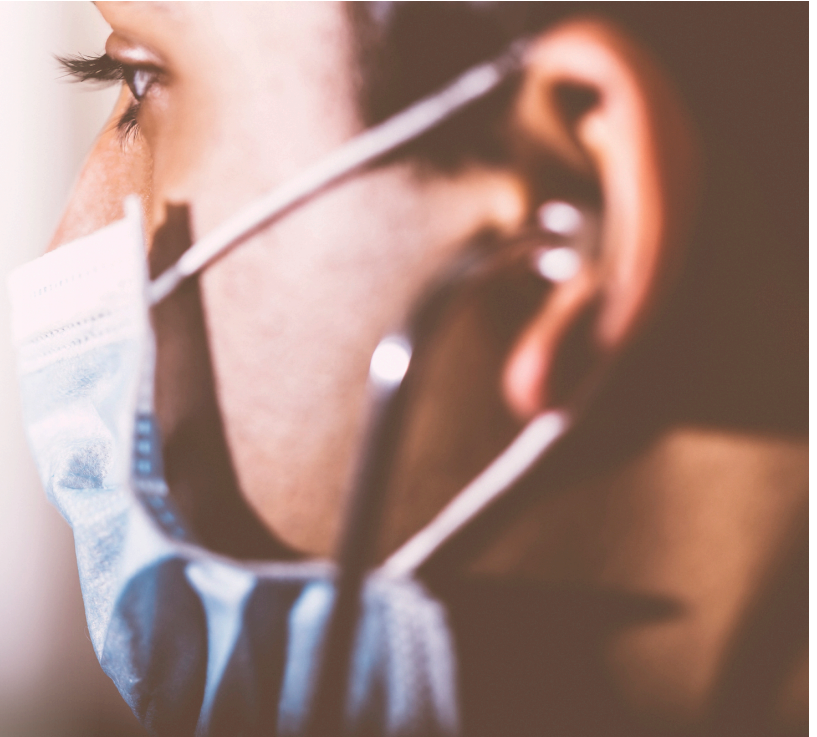
Agenda

Return to Work Framework
and Guidelines

Return to Work Measures

Civil Lawsuits

Other Considerations



Return to Work Framework

Where to Look for Guidance

- Centers for Disease Control and Prevention (CDC)
- U.S. Department of Labor (Federal)
 - Occupational Safety & Health Administration (OSHA)
 - Equal Employment Opportunity Commission (EEOC)
- State Labor & Employment Agencies
- Guidelines Opening Up America Again
- State Orders

Continued Evolution – This situation is still very fluid; what is considered best practice today could be outdated next week or next month.

OSHA

- The General Duty Clause – “Catch-all” provision that requires employers to furnish to each worker ***“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.”***
- Specific OSHA Regulations
 - Personal protective equipment (PPE), generally
 - Eye and face protection
 - Respiratory protection
 - Sanitation
 - Accident prevention signs and tags
 - Medical records and recordkeeping



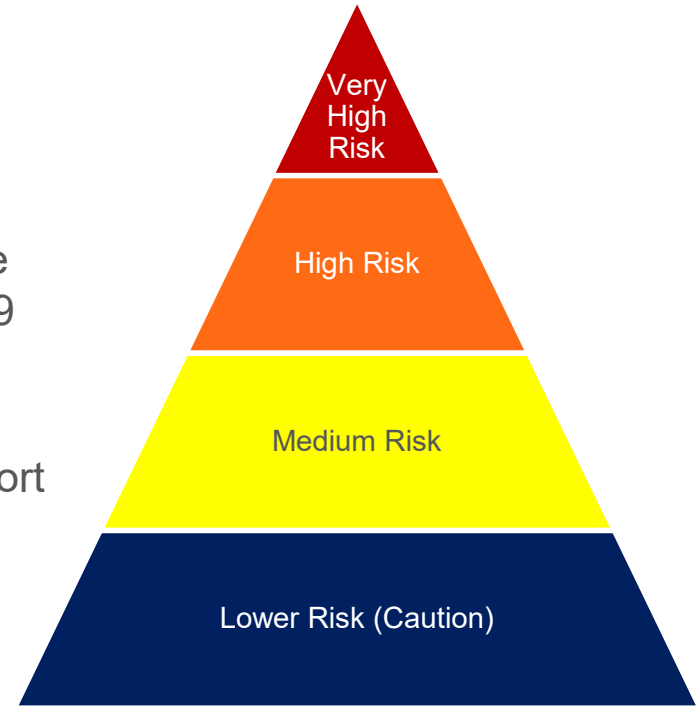
OSHA

- **Pandemic Preparedness and Response Plan** – Put your COVID-19 Plan into writing, per CDC and OSHA guidance
- **Pandemic Response Team** – Identify who will lead your Plan
- **Hazard Assessments** – This is this first line of defense and an underlying necessity to COVID-19 control and prevention
 - Assess what risks accompany COVID-19 exposure for your particular industry, for particular positions, and particular workers
 - Identify potential risks and sources of exposure in the workplace
 - Classify the risk level of exposure
 - Evaluate possible control and prevention accordingly

OSHA

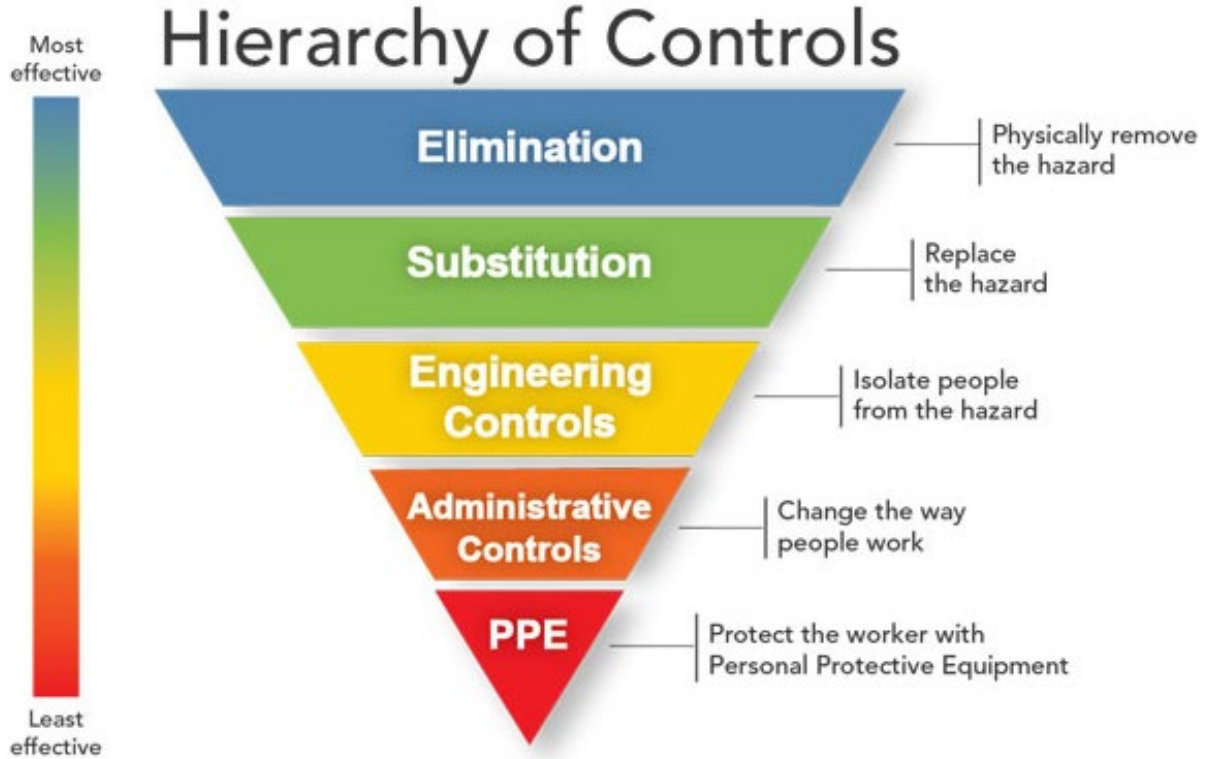
Four-Tier Risk Levels

- **Low:** Do not require contact with people known or suspected to be infected with COVID-19, nor frequent contact (6-ft) with general public
- **Medium:** Require frequent/close contact (6-ft) with people who may be infected but are not known to have COVID-19 (*frequent contact with general public*)
- **High:** High potential for exposure to known or suspected sources of COVID-19, including healthcare delivery, support state, medical transport, mortuary
- **Very High:** Very high potential for exposure to known or suspected sources of COVID-19, including healthcare, laboratory, and postmortem workers



Categorization based on nature of employer and specific duties

Control and Prevention: NIOSH Hierarchy



Return to Work Measures

Communications Plan and Training

- The success of any return to work plan will rest on successful integration of good policies, consistent practices, and a dedicated safety and health culture
- None of this will work unless all components are clearly communicated to all workers, and all workers are adequately trained on how to implement each aspect
- Just one slip up can jeopardize entire Plan



Return to Work Measures

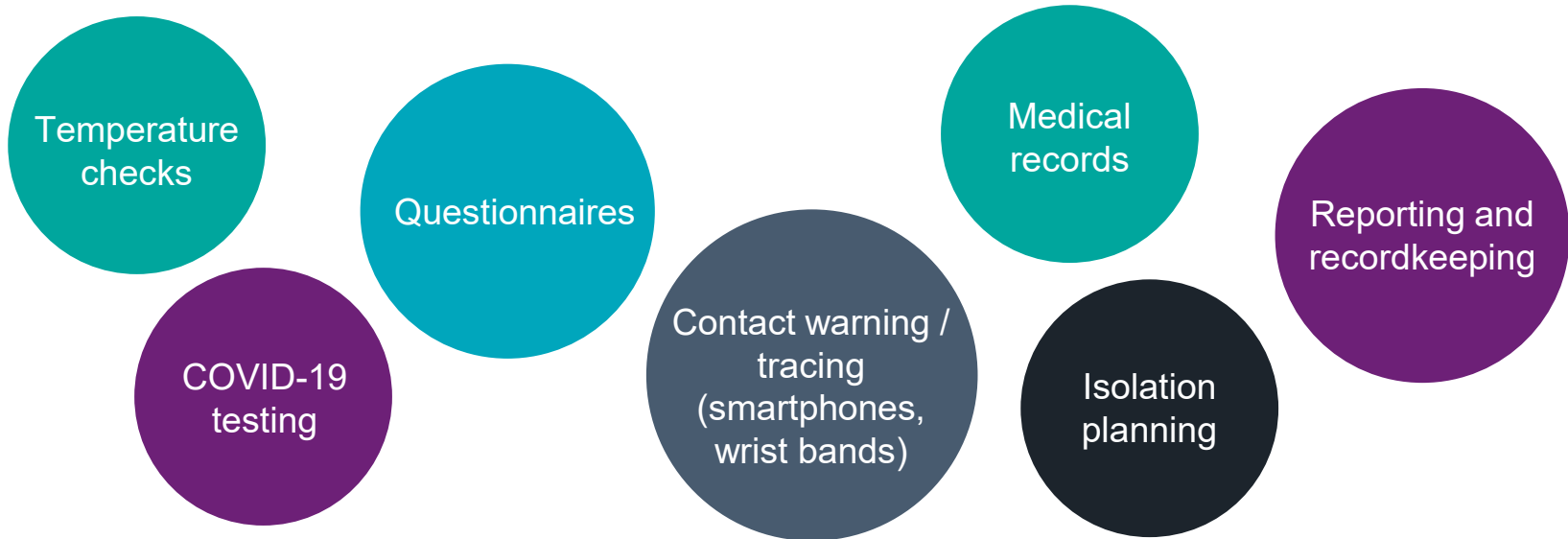
Key Basic Measures – for All Work Places Regardless of Exposure Risk Levels

- Basic hygiene, including avoid all contact with face, nose, and eyes; cover sneezes and coughs; immediately sanitize afterwards
- Frequently wash hands with soap and water for at least 20 seconds, and provide extra breaks for same
- Frequently disinfect work stations, commonly used areas, high traffic areas, and high touch areas
- Discontinue or modify use of common areas
- Social distancing of at least 6 feet, occupancy limits, direction of travel
- Discontinue non-essential travel
- Isolate sick individuals, avoid contact with infected individuals, and inform supervisors if an employee or a family member is infected, staying home if sick or showing any symptoms associated with COVID-19

Return to Work Measures

Implementing the Hierarchy of Controls – Based on Risk Level

- **COVID-19 Elimination (through screening and detection)**



Return to Work Measures

Implementing the Hierarchy of Controls – Based on Risk Level

- **Social Distancing**

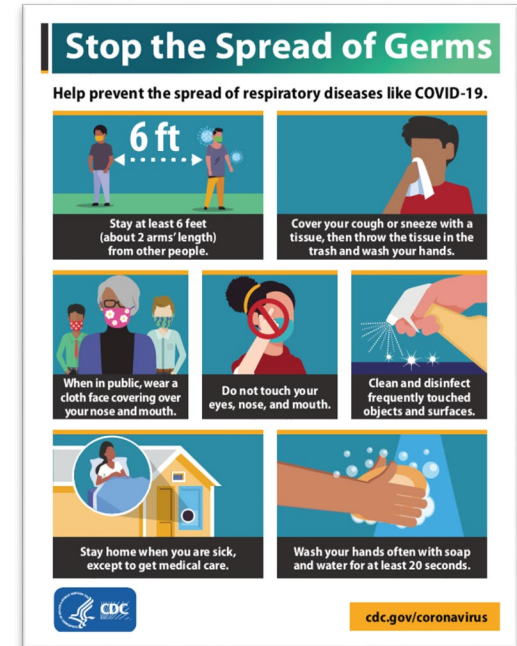
- Avoid unnecessary personal contact and interaction
- Physical barriers or partitions between work areas, personnel, and public
- Restrict number of persons in work areas and common areas
- Relocate high-risk individuals to lower-risk environments
- Specify certain hours for high-risk individuals
- Alternate work schedules
- Modify workplace traffic patterns
- Plan for contained spaces such as elevators, doors, locker rooms, restrooms, and break areas
- Suspend (or minimize) group meetings – pre-shifts, safety committees, team meetings

Return to Work Measures

Implementing the Hierarchy of Controls – Based on Risk Level

- **Sanitization**

- Limit opportunities for touch contamination
- Require hand washing and other personal hygiene measures
- Institute frequent decontamination procedures
- Implement waste handling procedures
- Avoid cleaning methods that re-aerosolize infection particles (i.e., dry sweeping)
- Ensure good ventilation and install high-efficiency filters
- Post proper warning signage



Return to Work Measures

Implementing the Hierarchy of Controls – Based on Risk Level

• Personal Protective Equipment

- Utilize PPE, where necessary and available
 - Face masks vs. respirators
 - Gloves, gowns, and eye protection
- Standard operating procedures
 - Sanitize after usage – user and PPE
 - Differentiate clean areas (e.g., where PPE is put on) from potentially contaminated areas (e.g., where PPE is removed)
- Training! Training! Training!



COVID-19 VACCINATIONS AND OSHA

- OSHA has long taken the position that employers can require its employees to take a flu or other vaccines
- However, OSHA emphasizes that employees “need to be properly informed of the benefits of vaccinations.”
- Setting aside other considerations such as the duty to accommodate under the ADA, the duty to accommodate sincerely held religious beliefs, a duty to bargain in a unionized environment and other considerations related to mandatory vaccinations. It is important to document that the employees have been properly informed of the benefits of vaccinations prior to taking the mandatory vaccination.
- It is also important to check your insurance policies to ensure protection from law suits and you should understand there is a possibility of workers compensation liability.



OSHA AND RECORDING COVID-19 CASES

- Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19, if:
 - The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC)
 - The case is work-related as defined by 29 CFR § 1904.5 and
 - The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7

OSHA ENFORCEMENT OF WORK RELATEDNESS ISSUES

- Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations.
- In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, CSHOs should apply the following considerations:
 - *The reasonableness of the employer's investigation into work-relatedness.* the.
 - *The evidence available to the employer.* .
 - *The evidence that a COVID-19 illness was contracted at work.* s develop among workers who work closely together and there is no alternative explanation.
- If, after the reasonable and good faith inquiry, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

OSHA REPORTING GUIDANCE

- OSHA issued new reporting guidance clarifying when to report work-related hospitalizations and deaths caused by COVID-19 to OSHA.
 - If employer learns that a worker died within 30 days of becoming infected with COVID-19 at work, the employer has 8 hours to report the fatality to OSHA. If the death occurs more than 30 days from the date of exposure, there is no duty to report to OSHA.
 - Employers are required to report work related COVID-19 hospitalizations within 24 hours of becoming aware that the employee was hospitalized due to a workplace exposure to COVID-19 if that employee's workplace exposure occurred within the 24 hours before their hospitalization.
 - Under the guidance, the work related incident is the workplace exposure, not the positive test.
 - No impact on recording obligations.

CIVIL LAWSUITS

Worker's compensation
coverage

Worker's compensation
bars

State executive immunity
(not for federal laws)

Legislative immunity
(currently in the works)

State order compliance
and creation of "standard
of care"

Questions? Please let me know.



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