



## Critical Industries Requirements Summary

### COVID-19: Workplace Safety & Health Guidance for Mechanical Contractors

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There are a number of federal agencies that provide guidance for employers in a variety of industries on appropriate occupational safety & health protocols to reduce the risk of workplace transmission of COVID-19 (Novel CoronaVirus or C-19), and related issues: the Occupational Safety & Health Administration (OSHA), and the National Institute for Occupational Safety & Health (NIOSH, part of the Centers for Disease Control, or CDC) are the agencies that apply to mechanical construction work that is not performed on mining properties.

The Equal Employment Opportunity Commission (EEOC) also has guidance that impacts COVID-19 workplace screening under employment laws including the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA) and HIPAA. [The latest "Q&A" guidance on COVID and employment laws was updated on June 11, 2020.](#)

MCAA's Guidance is a summary, as of June 15, 2020, of the requirements and recommended best practices for mitigating C-19 hazards for mechanical contractors, and MCAA's related member operations, based on federal laws. While most employers can rely on federal OSHA/CDC guidance in crafting their C-19 response and reopening programs, some state governments have included workplace safety or worker screening requirements in their reopening rules, or emergency declarations, that may differ from the federal version. For example, Delaware's emergency guidance specifies using a temperature reading of 99.5° F as a screening benchmark for removing workers, whereas the CDC and many other states use 100.4° F.

Employers should also examine state (and county/municipal) orders for reopening (or potentially reclosing) based on COVID rates, and what types of employee screening may be required on a state-by-state basis. The CDC indicates that the virus can be spread by people who are not showing symptoms yet (pre-symptomatic prior to becoming ill) or who are asymptomatic (never become ill), and that C-19 may spread by touching a surface or object that has the virus on it and then touching the "T zone" (eyes, nose or mouth).

Some infected persons may have mild symptoms and not realize they are ill. Symptoms can fluctuate and reemerge after a person initially feels recovered. Symptoms may include, but are not limited to, the following:

- Cough;
- Shortness of breath – difficulty breathing;
- Fever;
- Chills (and repeated shaking);
- Muscle pain;
- Headache;
- Sore throat, congestion, or runny nose;
- Nausea or vomiting;
- Diarrhea;
- NEW loss of taste or smell;
- Persistent pain or pressure in the chest;
- New confusion or inability to be awakened; and
- Bluish lips or face.

Some states also have included anti-retaliation provisions relating to workers with COVID-19 or have adopted new rules concerning any presumption of workplace transmission when workers report C-19 infections for worker's compensation purposes. In addition to any state statutory or common law protections, Section 11© of the Occupational Safety & Health Act of 1970 prohibits retaliation against workers who report an illness or injury, or who file a safety or health complaint with OSHA or raise concerns with management internally.

Employers should also remember that there are 22 states (plus territories) that run their own OSHA programs and may have more stringent requirements than federal OSHA. CalOSHA is one such example, and that agency's Aerosol Transmissible Disease standard, applicable in healthcare and other high-risk sectors, also pertains to contractors working in these environments or to other employers notified by CalOSHA in writing. Therefore, when developing a COVID-related workplace safety and health program that will apply to workers in multiple states, all applicable local laws and guidance should also be reviewed.

Other agencies, such as the US Department of Health & Human Services, the Food & Drug Administration and the US Department of Agriculture, have involvement in C-19 mitigation and approval of drugs and medical devices, and input on workplaces such as hospitals, nursing homes, rehabilitation facilities, meatpacking and poultry operations, but those are outside the scope of this MCAA Guidance as they pertain primarily to direct employees within those operations.

For mechanical contractors engaging in work in these or other "high hazard" work environments, it is recommended that employers review the additional guidance for those locations and adjust their COVID-19 response plans accordingly.

## **Occupational Safety & Health Administration (OSHA)**

OSHA issued its initial COVID-19 guidance for employers on March 10, 2020 (a 35-page booklet that is generic and based on initial CDC information and traditional industrial hygiene practices). Subsequently, the agency issued multiple rounds of guidance on issues including, but not limited to, use of N95 respirators, use of non-US-approved KN95 respirators, use of surgical masks and cloth masks, reporting and recording of COVID cases, severe injury report investigations, management of hazard and whistleblower complaints, and protocols for onsite inspections.

OSHA has divided workplaces into three general categories, but the actual industries included in each may shift as new cases or transmission information evolves. Mechanical contractors should consider the classification of the workplaces where they will perform activities and protect workers in accordance with the highest applicable levels of protection.

1. High and very high exposure risk jobs: Those with high potential for exposure to known or suspected sources of SARS-CoV-2 that occurs during specific medical, postmortem, or laboratory procedures. Examples include: Hospitals treating suspected and/or confirmed COVID-19 patients, nursing homes, emergency medical centers, emergency response facilities, settings where home care or hospice care are provided, settings that handle human remains, biomedical laboratories, including clinical laboratories, and medical transport services.
2. Medium exposure risk jobs: Those with frequent and/or close contact with, *i.e.*, within 6 feet of, people who may be (but are not necessarily known to be) infected with SARS-CoV-2. Examples include: Schools, high-population-density work environments – like meat and poultry processing, and some high-volume retail settings.
3. Lower exposure risk jobs: Those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2, or do not involve frequent close contact with the public. Workers in this category have minimal occupational contact with the public and other coworkers or contractors.

At this time, some of OSHA's initial guidance from March/April 2020 has been overturned or superseded and no longer represents agency policy. On May 19, 2020, OSHA issued the latest enforcement guidance, which suggests that it will largely revert to the inspection and complaint investigation procedures set forth in OSHA's 2019 Field Operations Manual. This guidance also reversed OSHA's previous position (from April 2020) on recording of COVID-19 cases. The final installments were issued on May 28, 2020, when OSHA issued guidance for "social distancing at work" in recognition of the resumption of operations across the majority of states and counties, and on June 10, 2020, when OSHA issued a "Q&A" concerning distinctions between cloth face coverings, surgical masks, and respirators. These are discussed below.

OSHA also has issued sector-specific fact sheets on operations that include the health care sector, manufacturing, meatpacking, and construction. The construction guidance is discussed below, but mechanical contractors engaging in work in these other industrial settings should review the sector-specific guidance in advance of entering those workplaces, to be alerted to any unique hazards or necessary precautions.

### *OSHA Enforcement & Investigations*

On May 19, 2020, OSHA revised its earlier (April 2020) guidance on enforcement, investigation of illnesses/injuries, hazard, and discrimination complaints, largely returning to more stringent policies that pre-dated COVID-19 (after initially standing down on some on-site follow-up investigative activities). [See the revised guidance.](#)

OSHA will continue to provide some enforcement discretion, across all industry sectors, with respect to certain requirements that are a problem to meet due to travel or other restrictions (e.g., limiting the size of training classes, or prohibiting third party trainers or certification entities onsite). Examples of enforcement deferral situations:

- Annual Audiograms
- Annual PSM Requirements
- HazWaste Operations Training
- Respirator Fit Testing and Training (annual only – not initial)
- Maritime Crane Testing & Certification
- Medical Evaluations to wear a respirator (must reschedule spirometry test once suspension is lifted per ACOEM)

[The complete guidance on enforcement discretion, dated April 16, 2020.](#)

Due to the level of reports received, as well as the thousands of hazard and whistleblower complaints, many initial investigations will consist of written notice to the employer that requires a response within a short period of time (typically five days). Failure to respond, or to provide a satisfactory response, can then result in an on-site investigation and/or inspection.

If OSHA finds that an employer was aware of a risk of transmission within its establishment (a “recognized hazard”), its employees were exposed to the hazard (which poses a risk of death), and there is a feasible method of abatement/mitigation (such as the procedures set forth in OSHA/NIOSH/CDC guidance for the particular industry), and failed to implement appropriate precautions, the agency can issue a civil penalty of up to \$134,937 per affected worker under its “General Duty Clause” (Section 5(a)(1) of the Occupational Safety & Health Act of 1970).

In addition, OSHA has the following codified standards that it can enforce relative to COVID-19 protections, but there may be others that apply depending upon the worksite:

- 29 CFR 1910.132 (general PPE), 1910.133 (eye/face), 1910.134 (respiratory protection), 1910.138 (hand protection);
- 29 CFR 1910.141 (sanitation);
- 29 CFR 1910.1020 (medical records access);
- 29 CFR 1910.1030 (Bloodborne Pathogens);
- 29 CFR 1910.1200 (Hazard Communication Standard, related to use of hazardous chemicals for cleaning and disinfection, including common sanitizers and sterilizers); and
- 29 CFR 1910.1450 (hazard chemicals in laboratories).

### *Reporting & Recording Requirements*

Employers must now record COVID illnesses if there is “objective evidence that a COVID-19 case may be work-related, and the evidence was reasonably available to the employer” and this is construed as requiring a due diligence investigation.

If the employer has a severe illness occur that affects an employee – including a fatality due to COVID-19 or collapse requiring hospitalization – the company must notify OSHA within 8 hours (for a fatality) or 24 hours (hospitalization, as well as any amputation or eye loss cases). Failure to do so results in a mandatory minimum penalty of \$5,000 per affected worker.

### *Face Coverings, Surgical Masks & Respirators*

OSHA issued new guidance on June 10, 2020, clarifying the distinctions between these different categories of protections, and which mandated standards may apply. The complete guidance, in Q&A format, can be reviewed [here](#).

The guidance reminds employers not to use surgical masks or cloth face coverings when respirators are needed, including for protection against air contaminants such as crystalline silica, lead, or asbestos. In addition, the guidance clarifies that social distancing measure (the “6-foot rule”) should be followed even when workers are wearing cloth face coverings. The CDC has guidance on washing face coverings that is cross-referenced by OSHA.

While most employers are familiar with respirators (which are governed by 29 CFR 1910.134 for both mandatory and voluntary use), and surgical masks are normally limited to use in hospital or other healthcare settings, OSHA has tried to clarify any confusion concerning the “cloth face coverings” that are now being recommended for workers who do not have to wear tight-fitting respirators. The key features of cloth face coverings are that they:

- May be commercially produced or improvised (i.e., homemade) garments, scarves, bandanas, or items made from t-shirts or other fabrics.

- Are worn in public over the nose and mouth to contain the wearer's potentially infectious respiratory droplets produced when an infected person coughs, sneezes, or talks and to limit the spread of COVID-19 to others.
- Are not considered personal protective equipment (PPE) – so 29 CFR 1910.134 does not apply.
- Will not protect the wearer against airborne transmissible infectious agents due to a loose fit and lack of seal or inadequate filtration.
- Are not appropriate substitutes for PPE such as respirators (e.g., N95 respirators) or medical face masks (e.g., surgical masks) in workplaces where respirators or face masks are recommended or required to protect the wearer.
- May be used by almost any worker, although those who have trouble breathing or are otherwise unable to put on or remove a mask without assistance should not wear one.
- May be disposable or reusable after proper washing.

### *OSHA Social Distancing Guidelines*

[On May 28, 2020, OSHA issued general “social distancing” guidance that will apply in most work environments \(e.g., those for which sector-specific guidance has not been developed by OSHA or NIOSH\).](#) Where available, employers should also review the sector-specific guidance for their industries to obtain more details on challenges and solutions in those operations.

The new guidance consists of seven steps to reduce exposures:

1. Encourage workers to stay home if sick.
2. Isolate any worker who begins to exhibit symptoms until they can go home or seek medical care.
3. Establish flexible worksites (telecommuting) and work hours (staggered shifts) where feasible.
4. Where customers are present, mark six-foot distances with floor tape where lines form, use drive-through or curbside pickup, limit # of customers inside.
5. Stagger breaks and rearrange seating in common break areas to maintain physical distance between workers.
6. Move or reposition workstations to create more distance and install plexiglass partitions.
7. Encourage workers to bring any safety and health concerns to the employer’s attention.

### *OSHA Construction “Best Practices”*

OSHA has continued updating its best practices recommended for construction operations. The information can be reviewed [here](#). In addition to the general practices concerning hygiene, hand washing, disinfecting common equipment and surfaces, social distance and face coverings, OSHA recommends the following:

- Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus.
- Continue to use other normal control measures, including personal protective equipment (PPE), necessary to protect workers from other job hazards associated with construction activities.
- Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible.
- Where work trailers are used, all workers should maintain social distancing while inside the trailers.
- Train workers how to properly put on, use/wear, and take off protective clothing and equipment.
- Use EPA-approved cleaning chemicals from List N or that have label claims against the coronavirus.
- To the extent tools or equipment must be shared, provide, and instruct workers to use alcohol-based wipes to clean tools before and after use. When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions.
- Keep in-person meetings (including toolbox talks and safety meetings) as short as possible, limit the number of workers in attendance, and use social distancing practices.
- Clean and disinfect portable jobsite toilets regularly.
- Encourage workers to report any safety and health concerns.

Similar guidance has been issued for:

- [Manufacturing worksites](#);
- [Warehousing and logistics operations](#); and
- [Nursing home/long-term care facilities](#).

It is advisable to check the OSHA website regularly for additional sector-specific guidance or other updates on enforcement and recording policies.

### **Centers for Disease Control/NIOSH**

The CDC and NIOSH have issued advice for various sectors on reopening best practices and conducted health hazard evaluations in the face of broad outbreaks in the meatpacking and agricultural sectors. The CDC guidance also provide for how those who have been exposed to COVID-19 but work in critical infrastructure or essential service sectors can remain on the job while mitigating risk to other workers and the public.

In May 2020, the CDC issued guidance for critical infrastructure and essential workers who have been exposed to COVID-19 but will need to remain on the job if they are not

experiencing symptoms. Some mechanical contractors, as well as those involved with electrical work or plumbing repairs that may be of a critical nature, can fall within this category. Some state orders have also delineated which industry sectors are considered “essential” and this could be triggered in the event of new closures.

The precautionary steps for workers who have known exposures to COVID-19 include:

- Pre-screening: Employers should measure workers’ temperatures and assess symptoms prior to starting work (before entering facility);
- Regular Monitoring: If no temperature within parameters or COVID symptoms are present, the exposed worker should self-monitor under the supervision of the employer’s occupational health program;
- Wear a Mask: Exposed workers should always wear a face mask in the workplace for 14 days after their last known exposure (the employer can issue or approve employee-supplied face coverings);
- Social Distance: Workers should stay 6 feet away from others “as work duties permit”;
- Disinfect and Clean Workspaces: Employers should routinely clean all areas such as offices, bathrooms, common areas, shared equipment; and
- If the exposed worker becomes sick during the day, send them home immediately and clean their workspace.

In addition, employers will need to compile information on persons having contact with the ill worker (during time of his/her symptoms and 2 days prior) and others at the facility who were within 6 feet of the ill worker during this time should be considered exposed and treated according to these protocols as well.

## **Conclusion**

While the many OSHA and CDC/NIOSH guidance documents and fact sheets are now being released (or under development), and these are helpful for employers looking to resume operations safely, it is critical to remember that these are not workplace-specific, and there may be other routes of exposure not accounted for. Effective employer reopening and ongoing exposure control plans developed do need to reflect actual working conditions and the worst-case scenarios (e.g., members of the public or other contractors who refuse to wear a face mask or threaten violence). There should also be a competent person designated to oversee implementation of the plans and plans should be reviewed and revised as conditions change, such as reclassification of a geographic area as a result of a new disease cluster or “hot spot.”

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