



# COVID-19 Workplace Safety: Documentation for OSHA Compliance



Section 5(a)(1) of the Occupational Safety and Health Act of 1970 is commonly known as the General Duty Clause. The General Duty Clause is intended to give the Occupational Safety and Health Administration (OSHA) authority to address workplace hazards for which no occupational safety standard currently exists. Examples include heat-related illness, workplace violence, and most recently, airborne transmissible disease (COVID-19).

The General Duty Clause requires that “Every employer shall furnish to each of his employees employment and 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.” Certainly, recent events of the coronavirus pandemic have introduced new recognized hazards across many workplaces and employers are moving into new areas for safety programs and measures to effectively protect workers in this new environment of business re-opening and recovery.

To allege a General Duty Clause violation, OSHA must satisfy each part of a four-part test stemming from enforcement policy and court precedent. To issue a citation under the General Duty Clause, OSHA must prove the following:

1. A hazard that poses a threat to the safety and well-being of employees exists in the workplace
2. The alleged hazard is recognized by the employer or its industry
3. The alleged hazard has the potential to cause injury or death
4. The employer had the ability or was capable of addressing the hazard



One emerging outcome of pandemic recovery and return to work has been increasing OSHA action relating to employee complaints about serious health and safety concerns in the workplace linked to COVID-19.

Employers, when called upon to respond to employee complaints and OSHA investigations, must be prepared to communicate and support policies, procedures, protocols, and practices that exhibit an effective strategy to observe current public health guidelines and protect workers from illness.



**Key elements of an effective strategy to protect employees and prevent spread of airborne contagious disease include the following:**

- + Workplace hazard assessment
- + Personal Protective Equipment (PPE)
- + Workplace protocols to advance hand hygiene, respiratory etiquette, and social distancing
- + Workplace engineering or administrative measures to reduce potential exposure to COVID-19
- + Workplace sanitation and disinfection plans
- + Employee training
- + Policies to encourage reporting of symptoms/positive tests
- + Policies to encourage sick employees to self-isolate/quarantine

Responding to an OSHA investigation for General Duty Clause (or State Plan COVID-19 Standard) violation will require formal and official documentation supporting compliance efforts.

Each operation and COVID-19 response strategy will be unique, but some consistent features of infectious disease control and response programs might include the following:

- + Listing of all job classifications in which employees have a potential occupational exposure to airborne infectious disease and associated risk level (**very high/high | medium/moderate | low**)
- + Listing of mandatory COVID-19-related personal protective equipment or respiratory protective equipment by job classification and/or task
- + Written procedures the employer will use to ensure that there is an adequate supply of personal protective equipment and other equipment necessary to minimize employee exposure to airborne transmissible infections, in normal operations and in foreseeable emergencies
- + Written policy/protocol requiring employees to follow CDC guidelines for personal protection
  - + Limit close or prolonged contact with others/ social distancing
  - + Perform proper hand hygiene measures
  - + Follow good respiratory etiquette when coughing or sneezing
- + Documented engineering and work practice measures to mitigate or eliminate potential workplace exposure
- + General or local exhaust ventilation (air movement)
- + Sneeze shields/barriers to maintain social distance with customers
- + Written cleaning and disinfection protocols
  - + Cleaning/disinfection responsibility and supervision
  - + Cleaning/disinfection plan and frequency (e.g., daily, pre-work shift, post-work shift, hourly, etc.) commensurate with exposure risk
  - + Inventory of cleaning and disinfection chemicals (EPA-approved)
  - + Cleaning/disinfection tools and supplies
  - + Documentation of completion (daily cleaning logs)



- + Documented employee training
  - + Date(s) of training
  - + Training facilitator(s)
  - + Training content
    - > Sources of exposure to the virus
    - > Symptoms of the virus
    - > Workplace protocols in place to prevent or reduce the likelihood of exposure
    - > Instruction to report emerging symptoms or contact with known/presumed case to supervisor immediately
    - > Stay at home guidance and instruction for workers that are ill or have household family member who is ill
    - > Protocols for new-hire and refresher training (if appropriate)
- + Participant acknowledgement (signature)
- + Written description of source control measures to be implemented for entry into the facility (e.g., health questionnaire, temperature screening, etc.), including method of informing people entering the work setting of the source control measures
- + Written procedures the employer will use to evaluate reported exposure incident(s), to determine the cause, and to revise existing procedures to prevent future incidents
- + Written procedures the employer will use to communicate with its employees and other employers regarding the presumed or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties
- + Written procedures the employer will use to communicate with other employers regarding exposure incidents
- + Written procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed in their respective work areas or departments
- + Written policies specifying medical/family leave practice for employees who are incapacitated by a serious health condition or are required to care for immediate family members diagnosed with a presumed or confirmed respiratory infection

Challenging General Duty Clause complaints and citations can be complicated in areas where specific standards are not established. Within the ever-evolving COVID-19 landscape, OSHA is attempting to find enforcement practicality and consistency. The prevention and mitigation measures implemented by employers should be based on prevailing science, actual workplace conditions and best practice (CDC) guidelines. The key to defending an alleged violation of the OSHA General Duty Clause resulting from a COVID-19 concern or complaint lies within written policies and tactical plans with full and complete documentation of implementation and employer enforcement.

*Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal or medical advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.*

