



NATIONAL SAFETY COUNCIL

Position/Policy Statement

Occupational Safety and Health Administration (OSHA) Regulatory Authority during the Coronavirus Pandemic

As of June 4, 2020, the following information is the most up-to-date information regarding the SARS-CoV-2 (novel coronavirus) pandemic. Given this, the National Safety Council has developed policy positions reflecting the most recent data and information. These may change over time as more information is learned.

POSITION/POLICY:

The National Safety Council (NSC) urges OSHA to issue a temporary emergency standard to protect workers from occupational exposure to COVID-19. This action should remain in place for the duration of the current COVID-19 pandemic and its possible reemergence to limit the spread of the virus in workplaces. The standard should be regularly evaluated and updated to reflect the latest science and evidence and take into account factors like work conditions like indoor versus outdoor sites. This action will also provide certainty to businesses that they are in compliance with this emergency standard.

Issues that could be addressed include, but are not limited to:

1. Accessibility to hand-washing in accordance with the Centers for Disease Control and Prevention (CDC) recommendations
2. Physical distancing requirements following CDC guidelines
3. Facial coverings that may include personal protective equipment (PPE) or cloth facial coverings based on the work environment and risk assessment
4. Utilization of the hierarchy of controls to include engineering and administrative controls and PPE use
5. Workplace COVID-19 symptom screening protocols
6. Workplace response plan development

JUSTIFICATION:

SARS-CoV-2

Late in 2019, a novel coronavirus was first identified in Wuhan, China. It is called “novel” because it is a new coronavirus for humans. It is abbreviated as SARS-CoV-2 and causes the disease COVID-19 (CO=corona VI=virus D=disease and 19 refers to the year it was identified).¹ On March 11, 2020, COVID-19 was declared a pandemic.²

The virus is largely spread through respiratory droplets from an infected person through a sneeze or cough. Droplets can initiate infection after depositing on an uninfected person’s eyes, mouth or nose and is especially spread when people are in close contact with each other—within 6 feet.³ About 80% of infected people are asymptomatic or have mild symptoms and can still spread SARS-CoV-2.⁴

Symptoms of COVID-19, which may appear 2-14 days after exposure, may include

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle or body aches
- Sore throat
- Headache
- Fatigue
- Congestion or runny nose
- New loss of taste or smell
- Intestinal symptoms of nausea, vomiting, diarrhea⁵

Some people may be at a higher risk for contracting the coronavirus. This includes people who are 65 years of age or older, people who live in a nursing home or long-term care facility and those of any age with underlying health conditions.⁶ These health conditions can include:

- Chronic lung disease or moderate to severe asthma
- Serious heart conditions
- Immunocompromised ailments
- Severe obesity
- Diabetes
- Chronic kidney disease undergoing dialysis
- Liver disease

¹ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>

² <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

³ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>

⁴ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_4#:~:text=For%20COVID%2D19%2C,infections%2C%20requiring%20ventilation

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- Hemoglobin disease⁷

To further prevent virus spread, the CDC recommends that people wear cloth facial coverings when going out in public.⁸ These coverings help stop the spread of respiratory droplets from traveling to and infecting other people. Other CDC recommendations include

- Cover all coughs and sneezes
- Throw away the tissue
- Wash hands immediately after a cough or sneeze
- Avoid being in public when sick
- Clean and disinfect surfaces regularly, especially high-touch areas like door knobs and light switches.⁹ [Here](#) is a list of household disinfectants from the EPA.¹⁰

People who have COVID-19 pose a direct threat to the health of others, including in workplaces. On March 11, the World Health Organization declared COVID-19 a pandemic, defined as the global spread of a new disease. The United States leads the world in the number of confirmed cases at 1,637,456 and 97,669 deaths as of May 26, 2020.¹¹ More state-by-state data can be found on the CDC website [here](#).¹²

Occupational Safety and Health Administration (OSHA)

OSHA is an agency within the U.S. Department of Labor responsible for protecting worker safety and health. It was created by Congress through the Occupational Safety and Health Act of 1970 (OSH Act). Since its existence, occupational deaths and injuries have declined.¹³ To enforce the rules and standards it creates, OSHA has thousands of inspectors who work directly for OSHA or for states to enforce federal standards, proactively visiting worksites to conduct safety and health oversight. These inspectors also respond to serious injury and workplace deaths with post-incident inspections. When violations are identified, OSHA can issue fines or seek court orders to shut down high-risk job sites, which is its main authority to incentivize compliance.

Like other federal regulatory agencies, OSHA has the authority to take emergency action when needed. This is often done in the wake of a natural disaster or after events like September 11. In addition to the Administrative Procedure Act of 1946, which gives these federal regulatory agencies the authority to issue an emergency rule, the OSHA emergency authority also is provided for in Section 6 of the OSH Act.

- (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines –
 - (A) That employees are exposed to grave danger from exposure to substance or agents determined to be toxic or physically harmful or from new hazards, and

⁷ Ibid

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

¹⁰ <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

¹² Ibid.

¹³ <https://injuryfacts.nsc.org/work/work-overview/work-safety-introduction/>

(B) That such emergency standard is necessary to protect employees from such danger.¹⁴

In the U.S., there are 22 states that oversee safety and health programs in those states (state plan states). These state programs must be at least as effective as the federal OSHA program. In the case of emergency actions, state plan states would be required to adopt the same or stronger federal standard.

NSC believes while in the midst of the COVID-19 pandemic, OSHA should exercise its emergency authority to protect worker safety and health, providing clear rules for workplaces. CDC data are clear that virus transmission occur when people are in close proximity and operating without appropriate PPE for the situation. The CDC recommends thorough cleaning and disinfection, ensuring that workplace practices allow for appropriate social distancing.¹⁵

Currently, OSHA has stated the agency has authority to issue citations to workplaces through the general duty clause¹⁶ from the OSH Act, but as of May 15, 2020, no citations citing the general duty clause or other mechanisms have been issued at workplaces.¹⁷ This is despite worker deaths from COVID-19 and virus transmission hotspots being reported throughout the country. The meatpacking industry and long-term care facilities have been studied as examples of workplace transmission.^{18,19}

NSC believes that OSHA has the authority to exempt certain employers that are unable to comply with the emergency order because of lack of access to PPE and supports OSHA use of this discretion as long as employers can show they are making a good faith effort to comply.

NSC will pursue implementation of a temporary emergency standard through legislative, administrative, judicial and public means by:

- Supporting state and federal legislation establishing a temporary emergency standard and/or a process to determine a temporary emergency standard.
- Pursuing, to the extent practicable, administrative remedies like a written petition for rulemaking by OSHA. A petition is the primary mechanism individuals, public interest groups and private enterprises can argue in favor of changes or new rules (or standards) for ensuring the general welfare of the nation.²⁰ NSC will, to the extent practicable, partner with other entities that favor this approach to join this petition for rulemaking. This petition may include a request to OSHA to develop a Notice of Proposed Rulemaking (NPRM) that delineates a standard for combatting infectious diseases if it is determined that either a temporary emergency standard should remain in place following the COVID-19 pandemic and/or if an infectious disease standard is more practical and timely than a COVID-19 specific temporary emergency standard.

¹⁴ 29 U.S.C. § 655

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

¹⁶ The general duty clause states, "Each 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 like to cause death or serious physical harm to his employees." Section 5(a)(1) of the OSH Act.

¹⁷ <https://subscriber.politicopro.com/article/2020/05/osha-has-issued-no-covid-19-citations-1935719>

¹⁸ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e3.htm>

¹⁹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e1.htm>

²⁰ 5 U.S.C. § 553(e)

- Supporting judicial actions to compel OSHA to develop a temporary emergency standard, by pursuing to the extent practicable, the filing of an amicus curiae brief in support of the legal filings by the AFL-CIO and others to compel OSHA to develop such a standard. NSC will also pursue support, such as amicus briefs, from other organizations to bolster these existing legal actions.
- Using the reputation and standing of the NSC to bring attention to the need for a temporary emergency standard by pursuing broadcast, print and social media opportunities for the purpose of raising awareness of the worker safety issues posed by COVID-19 and the federal government's role in providing infectious disease protection for all workers.

IMPORTANCE TO COUNCIL:

As the nation's leading advocate for workplace safety and health, the voice of NSC is needed now more than ever. This policy position supports the mission and vision of NSC by focusing specifically on eliminating a leading cause of preventable death and injury to allow people to live their fullest lives from the workplace to anyplace.

The current national emergency of addressing the coronavirus necessitates this action in order that employers know the specific measures they are required to take to protect their workers and the public. This action would provide those clear rules to workplaces. Data and information from the CDC, the National Institute of Occupational Safety and Health (NIOSH) and others, as well as international guidance, is available to inform OSHA on how and where to act through its emergency authority.

This position statement reflects the opinions of the National Safety Council but not necessarily those of each member organization.

Adopted by the National Safety Council, June 2020