

Federal and State OSHA Plan Standards for COVID-19



The Federal Occupational Safety and Health Administration (OSHA) has not issued any new standards to address the COVID-19 exposure in the workplace. However, employers must comply with OSHA's existing respiratory protection standard (29 CFR 1910.134) if they require employees to wear N95 or greater level particulate respirators. The Centers for Disease Control (CDC) has provided [guidelines for caregivers in assisted living communities](#), who must care for residents with suspected or confirmed cases of COVID-19. Based on this guidance, N95 or higher-level respirators, are recommended to protect employees who are in close contact with residents when providing care. Requiring caregivers to wear N95 (or equivalent KN95) respirators triggers OSHA's respiratory protection standard requirements, which include a written respiratory protection plan, medical exams, fit testing, and employee training. OSHA has provided news releases through its website with information on the latest developments for COVID-19 employee safety and its enforcement efforts.

There has been a dramatic increase in employee complaints to OSHA in recent months, since the COVID-19 Pandemic hit the U.S. earlier this year. Most complaints allege that employers are not adequately protecting their employees from the COVID-19 exposure through social distancing, wearing of masks, providing proper PPE, and other CDC recommendations for employee safety. In response to public pressure, some state OSHA programs (Virginia, Minnesota, and Oregon) have issued Temporary Emergency Standards or interim enforcement plans for COVID-19 exposures identified in the workplace. California's state OSHA program is applying its existing Aerosol Transmissible Disease or ATD standard, when senior living communities retain residents with suspected or confirmed cases of COVID-19.

All employers should be aware of Federal OSHA's respiratory protection standard requirements and the new temporary standard requirements, where applicable. Minnesota and Virginia are currently the only state OSHA programs that require written plans be implemented to address COVID-19 exposures in the workplace. Oregon recently issued a temporary standard, addressing COVID-19 workplace exposures that became effective on September 14, 2020. A list of OSHA federal and state program requirements and resource webpages for COVID-19 (where applicable), are listed below for your reference.

Federal and State OSHA Program Summary on COVID-19

Federal OSHA – No new Federal OSHA standards have been written to address the COVID-19 pandemic. However, if you isolate and treat COVID-19 positive or suspected positive residents, you must provide N95 or greater level respiratory protection to employees, based on CDC guidelines. This requires you to also have a written respiratory protection plan, complete with medical evaluations, fit testing and employee training. OSHA has issued several news releases, since the COVID-19 pandemic outbreak began in the U.S. and has also provided instructions for recording COVID-19 cases on your OSHA log. The following are OSHA news releases that are applicable to the senior living industry.

- **09/11/2020** - [Region 2 OSHA News Release](#) - U.S. Department of Labor Cites Hackensack Meridian Health in North Bergen, New Jersey, For Failing to Protect Employees from Coronavirus
- **07/21/2020** - [Region 5 OSHA News Release](#) - OSHA Cites Ohio Nursing Facilities for Failing to Fully Implement Respiratory Programs to Protect Employees from Coronavirus
- **06/15/2020** - [OSHA National News Release](#) - U.S. Department of Labor Publishes 14 Additional Translations Of OSHA Poster on Proper Workplace Use of Respirators
- **05/19/2020** - [OSHA National News Release](#) - U.S. Department of Labor Adopts Revised Enforcement Policies For Coronavirus
- **05/14/2020** - [OSHA National News Release](#) - U.S. Department of Labor Issues Alert to Keep Nursing Home and Long-Term Care Facility Workers Safe During Coronavirus Pandemic
- **04/24/2020** - [OSHA National News Release](#) - U.S. Department of Labor Issues Additional Respirator Guidance for Healthcare during the Coronavirus Pandemic
- **03/14/2020** - [OSHA National News Release](#) - U.S. Department of Labor Issues Temporary Enforcement Guidance for Respirator Fit-Testing in Healthcare during COVID-19 Outbreak

Alaska

Recommended COVID-19 Safety Plan Template webpage: https://www.labor.state.ak.us/lss/training/COVID-19_Safety_Plan_Example_Template.docx

Arizona

COVID-19 resource webpage: <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-home>

California

As of January 1, 2020, California OSHA's new serious injury and illness reporting guidelines went into effect. Cal OSHA's definition of reportable "serious injuries or illnesses" includes hospitalizations (for care and treatment of injury or illness), loss of an eye, amputations, and includes any case involving serious degree of permanent disfigurement. Different than the federal OSHA serious injury reporting rule, California OSHA does not stipulate that the serious injury or illness must occur within 24 hours after the work-related incident to be reportable. This is an important distinction regarding COVID-19 hospitalization cases, which would require that they be reported to Cal OSHA under the new rule. In addition to these serious injury reporting requirements, you may be required to implement an Aerosol Transmissible Disease (ATD) Program. An ATD program may be required if your community retains and isolates residents with suspected or confirmed cases of COVID-19. To protect employees from contracting COVID-19, N95 respirators may be required, following CDC guidelines for care, which also requires implementation of a full Respiratory Protection Program. Lastly, your Injury and Illness Prevention Program (IIPP) must be updated to address COVID-19 exposures. For more information, see Cal OSHA's COVID-19 resource webpage: <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

Hawaii

COVID-19 resource webpage: <https://labor.hawaii.gov/hiosh/covidresourceemployers/>

Indiana

COVID-19 resource webpage: <https://www.in.gov/dol/3142.htm>

Iowa

COVID-19 resource webpage: <https://www.iowaosha.gov/coronavirus-resources>

Kentucky

COVID-19 resource webpage: <https://govstatus.egov.com/kycovid19>

Maryland

COVID-19 resource webpage: <https://www.mdcountries.org/366/COVID-19-Resource-Webpage>

Michigan

Interim Enforcement Plan for COVID-19 webpage: <https://adms.apps.lara.state.mi.us/File/ViewDmsDocument/13356>

Minnesota

All businesses are required to establish a COVID-19 Preparedness Plan before reopening.

- Sample Plan webpage: http://www.dli.mn.gov/sites/default/files/doc/COVID_19_business_plan_template.docx
- COVID-19 Preparedness Plan FAQs webpage: https://www.dli.mn.gov/sites/default/files/pdf/COVID_19_preparedness_plans_industry_guidance_FAQs.pdf

New Mexico

COVID-19 resource webpage: <https://www.env.nm.gov/nmed-resources-for-covid-19/>

Nevada

COVID-19 resource webpage: [http://dir.nv.gov/uploadedFiles/dir.nv.gov/content/OSHA/Features/07-29-20%20\(Phase%20II%20Face%20Coverings\).pdf](http://dir.nv.gov/uploadedFiles/dir.nv.gov/content/OSHA/Features/07-29-20%20(Phase%20II%20Face%20Coverings).pdf)

North Carolina

COVID-19 resource webpage: <https://www.labor.nc.gov/coronavirus-disease-2019-covid-19>

Oregon

Temporary COVID-19 Standard, effective 10/12/20:

- Standard webpage: <https://osha.oregon.gov/rules/advisory/infectiousdisease/Documents/Oregon-OSHA-Draft-Temporary-COVID-19-Rule-Sept-25-2020.pdf>
- Overview table of COVID-19 requirements: <https://osha.oregon.gov/rules/advisory/infectiousdisease/Documents/Overview-Table-Oregon-OSHA-COVID-19-Temp-Rule-Sept-25-2020.pdf>

Puerto Rico

No state specific COVID-19 resource webpage

South Carolina

COVID-19 resource webpage: <http://www.scosha.llnline.com/coronavirus.aspx>



Tennessee

COVID-19 resource webpage: <https://www.tn.gov/workforce/employees/safety-health/tosha.html>

Utah

COVID-19 resource webpage: <https://coronavirus.utah.gov/>

Vermont

COVID-19 resource webpage: <https://labor.vermont.gov/covid19>

Virginia

Emergency Temporary Standard for COVID-19: <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-filed-RTD-Final-ETS-7.24.2020.pdf>

Washington

COVID-19 resource webpage: <https://www.lni.wa.gov/safety-health/safety-topics/topics/coronavirus>

Wyoming

COVID-19 resource webpage: <http://wyomingworkforce.org/businesses/osha/>

Conclusion

With a few exceptions, Federal and State OSHA programs have not written new standards to address the COVID-19 Pandemic exposure in the workplace. However, that does not mean that you cannot be cited by OSHA for violations of existing standards or the general duty clause, which states that “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 likely to cause death or serious physical harm to his employees.” In most cases, if you follow the CDC guidelines for your senior living care venues, which detail measures you should take to protect your employees (i.e. recommended PPE), you will comply with most OSHA standard requirements. Some states, including California, Minnesota, Virginia, and Oregon have specific regulations to address the COVID-19 exposure, different from the Federal OSHA regulations. If you have any questions or concerns about OSHA requirements relevant to COVID-19, please contact Scott Bertulis.

Daniel D. Pfister

Regional Director Risk Control, Midwest
Risk Control & Claim Advocacy Practice
+1 312 288 7370
daniel.pfister@willistowerswatson.com

Michael David, MS, CSP

Senior Risk Control Consultant
Risk Control & Claim Advocacy Practice
+1 847 204 0085
michael.david@willistowerswatson.com



Willis Towers Watson hopes you found the general information provided in this publication informative and helpful. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal advisors. In the event you would like more information regarding your insurance coverage, please do not hesitate to reach out to us. In North America, Willis Towers Watson offers insurance products through licensed subsidiaries of Willis North America Inc., including Willis Towers Watson Northeast Inc. (in the United States) and Willis Canada, Inc.

About Willis Towers Watson

Willis Towers Watson (NASDAQ: WLTW) is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets. We design and deliver solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas – the dynamic formula that drives business performance. Together, we unlock potential. Learn more at willistowerswatson.com.



willistowerswatson.com/social-media

Copyright © 2020 Willis Towers Watson. All rights reserved.
WTW494212/09/2020

willistowerswatson.com

Willis Towers Watson