



Kansas State Council of SHRM, Inc.
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KS SHRM COVID-19 WEBINAR DISCUSSION

April 29, 2020

Topic: OSHA Changes & Compliance due to COVID-19

Guests:

- Curtis Leiker – iSi Environmental
- James Overheul – iSi Environmental
- Alisa Ehrlich – Stinson LLP

Questions answered on the call:

1. Do you have any recommendations on videos that instruct proper mask and glove use?

iSi Environmental provides training on the use of PPE.

2. Are masks for the benefit of the one wearing the mask, or for people around them?

A little bit of both. Even with a cloth mask covering, there are benefits both ways even if you are healthy or asymptomatic.

3. Our CEO wants to reopen our insurance office as soon as the stay at home orders are lifted. I have many employees who say they are not comfortable returning to work yet. Our staff of 70 has been working remotely for 5 weeks now and everything has been going smoothly. How do I address this?

The messaging needs to be disseminated before you open up to try to dispel some of the nervousness.

4. Should we be taking temperatures? What does the employer need to implement to do this in a safe manner?

Remember that temperature is just one piece of the puzzle for coronavirus symptoms. Go through a complete analysis (costs, recordkeeping requirements, etc.) to determine if hiring an outside firm to provide screenings is necessary.



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5. If the Stay at Home order is lifted by the Governor on May 3, can employees still legally elect to stay at home if they have family members or themselves that are at higher risk of contracting COVID-19? They are currently on unemployment.

Good question! If the employer has work available for the employee, they need to report to work unless they're entitled to a leave benefit (FFCRA analysis). If they are simply nervous and don't want to go to work but work is available, then attendance policies may be enforced. There is no legal protection from being fired if they refuse to come to work and it's available. Be sure to undertake an analysis to determine best options (telework, underlying conditions, etc.).

6. Everyone seems to be at different levels of concern on this issue. Some are terrified of getting it and others think it is hyped up. We have put in place all recommended protocols but what are the risks of having protocols that are difficult to enforce (ensuring masks are worn, keeping 10 feet between workers). What are the enforcement expectations?

It is important to decide in advance regarding enforcement expectations. Provide a gentle curve and address it like any other employment issue with documentation. You are putting new processes in for a reason – to keep people healthy – so those processes need to be abided and enforced. Just be sure you convey the requirement and enforcement expectations in advance.

7. How do you maintain social distancing when employees work in an environment that requires at least one other person be present due to operation of heavy moving equipment, such as printing presses and large cutters?

The [OSHA 3990 guidance document](#) provides recommendations. Just try to evaluate the situation and address it as best you can.

8. Our office inspects residential facilities. What is our liability?

Your liability would be limited to workers compensation.

9. If masks are considered essential PPE under OSHA, does it have to be an official respirator regulated by OSHA?

Yes, N-95 or higher.

10. Should the employer provide the PPE?

If the employer has mandated PPE, then they have the responsibility to pay for and provide it. It is on the employer to evaluate if PPE is necessary based on OSHA guidance.



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11. What are the K-95 masks we are hearing about?

The K-95 masks are the equivalent respirator that could be used during the shortage of the N-95 respirators but they have not been through the official testing so only acceptable temporarily.

12. How does an employer get tests?

Not sure but hopefully more information will be forthcoming for testing.

13. Can you have employees state that they certify they do not have a fever when they come to work (if you cannot get a thermometer)?

Yes, because the EEOC is permitting that kind of questioning and screening and you may screen for symptoms and exposure as long as it is not done in a discriminatory manner. Regarding customers – you are welcome to display signage and certify their health/ask they sign in before meeting with employees and ask if they are exhibiting symptoms. If so, ask they contact by email or phone and reschedule the meeting.

14. Are businesses able to require face masks for customers?

You could require face masks for customers if you're making them available but may want to weigh business relationships and prepare for how to handle possible refusals. Surgical cloth masks provide a decent amount of protection.

15. What does “properly trained” mean regarding screening?

It depends on what the screening is. Taking temperatures, for example, you would want to keep both the screener and employee safe from exposure (should the screener wear gloves, face mask, etc.). Do a PPE analysis and determine what's appropriate. You will also need to determine proper thermometer calibration and threshold for what temperatures are acceptable.

16. What about asking employees where they have traveled or if they are planning to travel to and asking them to quarantine for 14 days before returning to work if they have traveled internationally or to a highly infected area?

KDHE initially ordered a quarantine but unsure if OSHA is still defining hot spots. Assuming you have a reasonable basis for concern for risk from travel, it would probably be warranted.



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17. We have several exit doors and are only allowing entry through specific doors. We will be cleaning the used doors as a priority. Would it be permissible to post a notice that these doors are not being cleaned as often and to use at your own risk?

It is permissible but not sure if it's appropriate unless you elaborate on your reasoning. Also be sure you use caution and don't actually physically block any emergency exits.

18. What happens when an employee has exhausted all leave – doesn't fall into any of the six FFCRA categories and has a person at home who has a compromised immune system – and wants to stay home?

This is a situation where you could potentially decide to provide an unpaid leave of absence but could always terminate. Even an unpaid leave of absence can be an accommodation.

19. Do you have suggestions for shared workspaces (shared keyboards, supplies, etc.)?

I would try to avoid that as best as possible, otherwise sanitize as much as you can.

20. How long does someone have to be close to someone possibly infected for it to be considered a close contact?

Ten minutes of exposure.