

How Can Construction Companies Manage the Hazards Related to COVID-19?

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As workers return to jobsites, construction companies, like all employers have a responsibility to provide a safe work environment. If workers (including the trades, construction managers, project managers, bank inspectors, superintendents or design professionals) are exposed to the virus or contract COVID-19, employers may face liability under the OSHA General Duty Clause.

The OSHA General Duty Clause provides:

Each employer (1) 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; (2) shall comply with occupational safety and health standards promulgated under this Act.

Section 5(a)(1) of the Occupational Safety and Health Act of 1970 ("OSHA"), 29 USC 654(a)(1)

OSHA has issued some general guidance and recommendations respecting worker safety and COVID-19. These include: a) isolating workers feeling ill; b) suggested cleaning protocols for the work place; and c) providing hand sanitizing and hand washing stations; and d) providing personal protective equipment ("PPE"). Significantly, the OSHA guidance warns that the employer's general duties are not waived, defined or limited by the guidance.

As of May 1, OSHA has not issued specific guidelines to help construction companies create protocols that could prevent infections from COVID-19 in building maintenance. Should this type of guidance be issued, construction companies should adopt those policies and procedures.

Organizations including the National Association of Building Trade Unions ("NABTU") and the American Council of Engineering Companies of New York ("ACECNY") have issued guidance for worker safety including specific guidance for design professionals respecting COVID-19 job hazard abatement on construction sites. In the absence of specific OSHA or state guidance, construction companies must review the available research and develop a plan. Subject to additional governmental directives or medical guidance, below is list of guidance that has been compiled from leading construction industry resources.

Practical Guidance for Construction Companies During Return to Work (COVID-19)

For purposes of this guide, anyone seeking to enter the construction site, trailer or office should be considered a "worker."

1. Health Screening

No one suffering from a fever or cough should be allowed on the job site. This may require that scanning thermometers be used to check for fever at the start of every shift. If simple inexpensive swab tests with quick results for COVID-19 become available, they may have to be administered to the work force at the start of every shift.

2. Personal Protective Equipment

Everyone allowed on the site must have a face mask. As discussed below for most activities additional personal protection equipment ("PPE") will be necessary.

3. Signage and Instructions

All workers should be provided with oral and written instructions on how to avoid exposure.. This includes reminders for regular, frequent handwashing, and avoiding touching of the face.

4. Mandated Handwashing / Sanitizing

Guidance suggests that construction companies mandate regular handwashing at the start of a shift, at least once during a shift and at the end of a shift. All sites will have to have access to soap and water or alcohol based hand sanitizer for this purpose.

5. Social Distancing

Social distancing is essential and must be required for safety meetings, as well as work activities, breaks and lunch. Regular verbal and written reminders of the importance of social distancing should be included in the return to work plan.

6. Job Reorganization

In order to maintain job progress and social distancing, jobs may have to be reorganized into 21 eight hour shifts per week. Trades will have to have staggered start and end times to avoid crowding on hoists and elevators. Crews may have to be smaller and some shifts will have to be dedicated to material delivery and staging.

7. Personal Protective Equipment for Crews

Many crews need to work together or interact periodically. Therefore, workers should be provided with N95 masks, nitrile gloves, and possibly goggles or in lieu of the N95 masks and goggles, reusable full face masks. In addition, the workers will continue to need task gloves. Workers will need to be schooled on how to remove the equipment safely, how to protect themselves and their families from any virus on their clothes or boots. Working in this equipment will slow productivity and may dehydrate the workers. So, sites will need clean drinking water available for the trades.

8. Disinfecting Equipment

All equipment, tools and materials should be disinfected at the end of every shift. There are portable spray devices available that can help facilitate this process. Work gloves, reusable face shields, and safety gear such as florescent vests will also have to be disinfected after every shift. One time use masks and nitrile gloves should be discarded after every shift.

Workers should be encouraged to wipe down their phones and portable electronics with alcohol wipes at least daily.

9. Portable Restroom Cleaning

Port-a-johns must be cleaned constantly. Cleaning materials must contain disinfectant or lanolin, either of which will kill the virus. Alcohol (70% or higher) or bleach wipes should be provided for spot cleaning and should be readily available at the site. Additional cleaning guidance is available from the CDC. This guidance includes references to cleaning agents proven to kill the SARS-COV-2 virus. The CDC is not recommending cleaning of outdoor areas.

What Impact Will this Have on My Business?

All of these changes pose difficult issues subcontractors, contractors, construction managers and owners. The cleaning materials, swab tests, masks, shields, gloves and other equipment will be costly. The time required for the administering temperature checks and regular handwashing could also be a significant cost. Work will not advance as quickly as the crews will be smaller and efficiency will be lost due to the PPE.

Owners will have construction loan issues due to contractors and construction managers who may have guaranteed maximum prices or schedules or both to meet. Construction companies will be challenged to find room in the budgets and schedules for the changes required to combat COVID-19.

Additionally, the unions will likely expect to have the crews paid shift differentials and for weekend work. This presents an expensive challenge that neither owners nor contractors will want to take from their bottom line. Unions will also be looking to management to pay the sick leave for workers with COVID-19, regardless of whether there is a provable connection between the project and the illness so that the impact to their benefit funds are shielded from these costs.

While these impacts are significant and will be hard felt, it is critical for the industry to be practical and realistic until a vaccine is available. Everyone will need to do their part and make sacrifices to prevent projects from being shut down or bankrupted. By following the guidance and working to keep everyone safe, the industry can make the jobs as efficient as possible in terms of cost and time, and work towards recovery.

Links to resources:

<https://www.osha.gov/Publications/OSHA3990.pdf>

<https://www.osha.gov/Publications/OSHA3989.pdf>

https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf

https://cdn.ymaws.com/acecny.org/resource/resmgr/advocacy/Safety_Guidance_Document_v3_.pdf

<https://www.cebm.net/covid-19/hand-disinfectant-and-covid>

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

https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Reopening_America_Guidance.pdf

https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/ReOpening_America_Cleaning_Disinfection_Decision_Tool.pdf

For additional up-to-date information and resources on all COVID-19 related developments impacting businesses and individuals, [click here](#).

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