

Webinar: Managing a Pandemic in Real-Time

Questions & Answers Summary

Responses by James Junkin, speaker

Are there requirements stated that we should take employee temperature prior to beginning work duties? If they refuse to take temperature, how do we handle these employees to protect others?

There are no legal requirements to take temperatures and practices vary by state. Your company should have a written policy and require employees to follow the policy. Should they refuse, you can bar their entry into your facilities.

Do essential businesses need to have these plans?

Yes. Every business needs a business continuity plan. Many owner clients and operators are requiring them of their supply chains as well

Do you think Covid-19 testing is going to be made readily available and free? We are trying to develop a new new hire policy because we have screening and temp checks, but we really want new hires to test negative. We know they can still get the virus after testing, but just to bring someone new in and they have the virus would shut us down.

Statements from the federal authorities indicate that testing supplies will be made readily available to the states. As to who will bear the burden of cost has yet to be stated. You could require a negative test as a condition of employment and the burden would be on the prospective employee to provide it or you could contract with an occupational medical facility to include the testing in a fit for duty type exam.

How would you suggest addressing/assessing the risk of exposure and/or contraction at work with regard to OSHA recordkeeping reporting and the extent to Workmans Comp and Fatality Reporting probabilities. Do you see this as a huge potential to lose realization? Meaning the implication under the current reporting requirements since there is no exemption that these could evolve into recordable illnesses, LT/Restricted Duty, Fatalities and the implications toward risk liability.

OSHA has issued new directives to the 29 CFR 1904 reporting requirements because where a person actually contracted the disease is hard to decipher. OSHA's focus is on the healthcare industry, as the likelihood of contraction through occupational means is higher. The directives are for businesses to take reasonable steps to protect their employees and unless you can 100% prove that an employee contracted the virus through work, you do not have to list that illness as an OSHA recordable. OSHA has listed the new guidelines on their website.

29CFR134 Requires that you assign protection factors and would not necessarily cover anything below an N95 mask. How do we deal with the compliance aspect of a surgical mask and assigning a protection factor when we don't know the exposure factors?

A surgical mask would not be considered a respirator under 29 CFR 1910.134 and as your question stated it would be impossible to assign a protection factor because of the exposure parameters.

With regard to the PPE aspect relating to one of the previous questions on adequacy of PPE. Do you have guidance on how to document the PPE Assessments as required by 29CFR132?

Subpart I requires employers conduct a hazard assessment and to certify that hazard assessment. When hazards cannot be controlled by other means, PPE is appropriate. Should you choose to use PPE as protection against the virus, do so and document that you are following the guidance of the CDC and WHO.

With regard to "issues appropriate PPE" what is the risk associated with issuing the PPE and requiring the PPE such as a surgical mask and disposable gloves, Does a company become responsible under the same OSHA requirements for validation that the PPE is adequate and effective, and with the evolution of this pandemic how do we assure that and by stating that a mask or face covering with the CDC guidance and we later find out that these are/were not actually adequate and that this was for attempt at keeping adequate available to medical responders. This also relates back to my last question. How do you address this risk or how do you classify it for supportive assessments to Sr. Management?

The employer is responsible for evaluating the respiratory hazards in the workplace under 29 CFR 1910.134. Should the company require employees to wear PPE that would be considered a respirator under the standard, then the respirator must be NIOSH approved and the company must institute a respiratory protection program to include fit testing and medical evaluations. Some wonder if an N-95 is a respirator by definition and OSHA has answered that question in a letter of interpretation from 2011 to Edwin Faulke. OSHA states that an N-95 is a respirator and has an APF of 10. Therefore, if you are going to require that, then you must institute the requirements of 29 CFR 1910.134. A simple, loose fitting face covering would not be considered a respirator, and therefore the OSHA requirements would not apply. Companies should keep abreast of the latest guidance from the CDC and make reasonable efforts to follow that guidance. As long as the company operates in good faith, takes reasonable steps, incorporates changes when changes are warranted the company would be deemed to be acting accordingly. As it relates to the supportive assessments to management, consider COVID-19 to be a hazard, as with any hazard and the company must take steps to reduce the known risks to workers. This is not to imply that risk can be managed to zero, but to as low as is practical with consideration given to the available resources.

Tracking system and contact tracing requirements that are being implemented in several states and incorporated into orders for business. How do you see gaining required compliance with the HIPPA requirements, enforcement and incorporation into practice vs employee rights?

The answer to this question is a legal question and one that the courts have yet to address. It is recommended that you consult with your legal counsel on the specific laws within your state and the federal laws and get an opinion letter to support the actions your company may need to take. This will provide evidence that the company did its due diligence before taking action.

Are there any examples of a business continuity plan available for review?

The internet provides several boilerplate examples of business continuity plans. You can use those as a format but the plans need to be specific in nature and include the topics covered in the webinar at a minimum

When opening, how do we handle controls for those that can not wear masks in the office or on the jobsite due to health concerns? Does the employer have to make provisions for those employees?

Social distancing, working remotely, and making a reasonable accommodation are ways to protect employees who for health reasons cannot wear masks. Should you not be able to make a reasonable accommodation, you should have a written job description that lists the essential functions of the job and include the wearing of a mask. Have those employees sent to an occupational physician and include the job description so that the physician can indicate if the employee can or cannot wear a mask. If they cannot, the employee cannot meet the essential functions of the job. At this point it is management's decision as to reassign the worker or to not retain the worker because they cannot meet the essential functions.

Risk management and Personnel management still have not released a game plan moving forward, so I still work from home to conduct training programs. What is the best way to approach them to step up and communicate to employees?

This webinar is a good starting point to initiate conversations with the management team about the need to communicate to workers through innovative means. Effective communication will stop unfounded rumors and calm fears. By doing so, critical employees may stay with the company that may consider leaving.

Can employers require employees to observe infection control practices such as hand washing, personal trash disposal and social distancing?

The short answer is yes. It is recommended that you develop a policy in this regard, train your employees on the requirements, and use a progressive disciplinary process to ensure compliance.

We have a plan, how do we know our communications of that plan are reaching front line workers, what are some pointers on how to track/measure?

Field audits are a good way to determine if the plan is working as well as direct feedback from front line workers.

How is pandemic planning different from business continuity planning (BCP)?

A pandemic plan focuses only on the health and safety aspects of dealing with infectious diseases. A business continuity plan includes financial and operational considerations and contingencies as the pandemic affects the company.

What does Red Alert Cleaning and Sanitation look like?

This would be emergency cleaning and sanitation. It can be performed by an outside contractor or competent internal employees. The action of Red Alert Cleaning would be a deep cleaning and disinfection of all surfaces that can be contacted by employees using a cleaning product that is effective against virus.