

The background of the slide features a close-up, 3D-rendered image of several COVID-19 virus particles. These particles are depicted as grey, spherical structures with a textured surface, covered in numerous red, crown-like spikes (resembling the 'corona' shape) and smaller yellow dots. The particles are scattered across the frame, with some in sharp focus and others blurred in the background, creating a sense of depth.

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Safety First – Employer Considerations, OSHA Guidelines, Illness Reporting and New Laws during COVID-19

*Presented in Partnership with
Foundation Software by:*

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Navigating the Unknown Impacts of COVID-19

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COVID-19 Project Time and Cost Tracking Checklist*

Due to circumstances surrounding the COVID-19 pandemic, many contractors and subcontractors will likely experience significant impacts or possible temporary suspension of work across various ongoing projects. It is critical that all impacts to time and cost are documented according to the contract requirements for compensation. Key factors to keep in mind for proper time and cost tracking include:

Time Tracking Techniques

- Retain all project specific correspondence related to COVID-19
- Determine additional safety protocol being implemented at the project site that reduces efficiency and daily work production
 - Create a sample tracker for an individual to document additional time spent adhering to updated protocols and utilize as a basis for loss of time and additional costs

Cost Tracking Techniques

- Additional cost to properly secure the site and/or secure material and equipment specific to the trade of work being performed
- Additional cost to potentially demobilize equipment for security purposes
- Additional cost for idle equipment that remains unused for the suspended period of time
- Additional cost for idle manpower that cannot be displaced to other projects during the suspension of work
- Additional cost for maintaining the project site and/or specific areas of the site
- Additional cost for potential remobilization of equipment when work is released
- Additional cost for escalated labor due to rate changes
- Additional cost for subcontractor/lower tier escalation
- Additional cost for escalated material due to market impacts

Substantiating Documentation

- Extra work authorization tickets
- Daily construction reports
- Daily and/or hourly charge-out labor rate sheets
- Daily and/or hourly charge-out equipment rate sheets
- Photo documentation with date and time stamps
- Material and vendor invoices
- Original proposals/agreements and revised proposals/agreements
- Critical path impact schedule updates
- Correspondences including letters, emails, and summary call logs

These key factors are important proactive steps to properly document and substantiate time and cost impacts arising from the COVID-19 pandemic. Other resulting cost factors can certainly arise as well, including adverse weather conditions and loss of productivity. Hahn Loeser & Parks' Construction Service Team is available to discuss these important tracking techniques. For more information please contact **Rob Remington** (rrr@hahnlaw.com) or **Chad Van Arnam** (cvanarnam@hahnlaw.com).

* This Checklist is for informational purposes only. It is not intended to and should not be construed as legal advice. All information contained herein should be discussed and reviewed by authorized legal counsel prior to taking any action.

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Today's Agenda:

- ✓ **OSHA guidance on preparing workplaces for COVID-19**
- ✓ **Recording Requirements for COVID-19**
- ✓ **Employment Law Issues related to COVID-19**

OSH Act of 1970

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health.

OSHA Guidance on Preparing for COVID-19

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

- General guidance for all employers
- No new mandates or enforcement guidelines
- Suggested best practices based on general knowledge of infectious disease

How do I protect my company?

Develop an Infectious Disease Preparedness and Response Plan

- Determine potential exposure sources
 - General public?
 - Customers?
 - Co-workers?
- Non-occupational risk factors
- Workers individual risks
- Then assess what is necessary to address those risks

How do I protect my company?

Implement Basic Infection Prevention Measures

- Regular hand washing/access to sanitizer
- Stay home if sick
- Educate on and encourage respiratory etiquette
 - Tissues and trash receptacles
- Measures to increase social distancing
- Don't hand off equipment (phones/radios)
- Sanitize workplaces

How do I protect my company?

Develop a Policy and Procedures to identify and isolate sick individuals

- Prompt identification is key
- Inform workers and encourage self monitoring
- Reporting policies and procedures
 - Symptoms
 - Contact with symptomatic individuals
- Isolation procedures
 - Identify an area to quarantine
 - Restrict access
 - Protect workers in close contact with individuals in quarantine

How do I protect my company?

Monitor Subcontractors and Suppliers

- Require adherence to COVID safety policies
- Ensure monitoring of subcontractor and supplier employees
- Enforcement is key!
- An ill person is a safety risk on a job site

Workplace Controls

- **Engineering Controls**: these are mechanical measures that do not rely on employee behavior
- **Administrative Controls**: these are policies and procedures that depend on employee compliance for effectiveness

Engineering Controls

- Barricades
- Increased ventilation
- High efficiency air filters
- Demarcation of six-foot separation

Administrative Controls

- Encourage sick workers to stay home
- Minimize contact among workers
- Stagger shifts/trades
- Up-to-date education and training
 - What PPE is required
 - How to use it
 - When to use it

Personal Protective Equipment

Examples

- Gloves
- Goggles
- Face Shields
- Face Masks
- Respiratory Protection

OSHA Standards

Nothing specific for COVID-19, but two key standards likely apply:

- PPE standards
- General Duty Clause

General Duty Clause

Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker “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.”

Classification of Risk

- Very High: High potential for exposure to known or suspected sources of COVID-19 during specific medical/laboratory procedures
- High: High potential for exposure to known or suspected sources of COVID-19
- Medium: Jobs that require frequent and/or close contact with people who may be infected but are not suspected to be infected
- Lower Risk: Jobs that do not require contact with people known to be or suspected to be infected AND do not require frequent close contact with the general public

Suggested Controls (Lower Risk)

- Engineering Controls:
 - None recommended
- Administrative Controls:
 - Monitor public health communications about COVID-19 and provide employees access to this information
 - Collaborate with workers to develop effective communication methods

Suggested Controls (Medium Risk)

- Engineering Controls:
 - Install barriers
- Administrative Controls:
 - Consider face masks
 - Monitor public health communications about COVID-19 and provide employees access to this information
 - Collaborate with workers to develop effective communication methods

OSHA Recording Requirements – COVID-19

OSHA has issued interim guidance to its CSHOs regarding recording requirements for cases of COVID-19 as an occupational illness. To trigger these requirements, the case must meet three criteria:

1. the case is a confirmed case as defined by the CDC
2. the case is work related; and
3. the case involves one or more of the general recording criteria set forth in 29 CFR §1904.7.

Criteria 1 – Confirmed Case

A confirmed case is one where the employee has at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19.

<https://www.cdc.gov/coronavirus/2019-ncov/php/reporting-pui.html>

Criteria 2 – Determining Work Relatedness

The criteria for a case being work related are set forth in 29 CFR §1904.5.

An illness is considered to be work related if “an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.” 29 CFR §1904.5(a).

Criteria 2 – Determining Work Relatedness

OSHA has provided additional guidance on determining “work relatedness” setting forth two circumstances that support a determinate that the illness is work related:

1. There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. The evidence was reasonably available to the employer. (Includes information given to the employer by employees, as well as information that an employer learns regarding its employees’ health and safety in the ordinary course of managing its business and employees.)

Criteria 3 – Recordable?

The recording criteria are set forth in 29 CFR § 1904.7.

An employer must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following:

- Death
- Days away from work
- Restricted work or transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness.
- A significant injury or illness diagnosed by a physician or other licensed health care professional.

OSHA Key Message – Focus on Hygiene

The general message is to focus on hygiene rather than determining work-relatedness

Memo to CSHOs on enforcement procedures:

<https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

COVID-19 Employer Considerations

- Employees who come to work and should
- Employees who come to work and should not
- Employees who do not come to work and should
- Employees who do not come to work and should not

Employee Who Come to Work and Should Not

- Continually and consistently communicate that employees who have symptoms must stay home
- Ensure that employees are conducting daily symptom assessment
- Plan your response to asymptomatic employees with exposure to person with suspected or confirmed COVID-19

Employees Who Do Not Come to Work and Should

- Communicate, in writing, work is available and precautions taken
- Apply time off
- Be flexible, when possible
- Consider legal responsibility to accommodate disabilities
- Report rejection of available work to unemployment compensation authority

Employees Who Do Not Come to Work and Should Not

- Emergency Paid Sick Leave
- Family and Medical Leave Expansion Act
- State or local required leave
- FMLA leave
- Employer policy
- Accommodation of additional time off beyond what is allowed

Emergency Paid Sick Leave

Up to 80 hours of leave, with job restoration, if employee is unable to work (or telework) due to:

1. Employee is subject to a federal, state or local quarantine or isolation order
 - Includes state stay at home orders if “but for” the order the employee would be able to work
2. Employee has been advised by healthcare provider to self-quarantine
 - Employee has, may have or is particularly vulnerable to COVID-19
3. Employee is experiencing COVID-19 symptoms & is seeking a medical diagnosis
 - Applies when employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19
4. Employee is caring for an individual subject to a federal, state or local quarantine or isolation order or has been advised to a health care provider to self-quarantine
 - Immediate family member, a person who regularly resides in employee’s home, or a similar person with whom employee has a relationship

Emergency Paid Sick Leave & FMLA+

Up to 80 hours of EPSL & 10 additional weeks FMLA+ leave, with job restoration, if employee is unable to work (or telework) due to:

- Employee is caring for a son or daughter if the school or place of care is closed or the child care provider is unavailable

Documentation

- Employee's name
- Dates for which leave is requested
- COVID-19 related reason for leave and support
 - Name of government entity
 - Name of healthcare provider
 - Person's name and relation to employee
- A statement that the employee is unable to work, including telework

Documentation

- Name and age of children
- Name of the school that has closed or place of care that is unavailable
- Representation that no other person will be providing care for the child during the period for which the employee is receiving leave
- Statement that special circumstances exist requiring the employee to provide care for a child older than 14 during daylight hours

FMLA Covered Employers

- FMLA required paperwork does not apply to EPSL or FMLA+, but can be used
- FMLA+ counts toward employee 12 week FMLA entitlement



FOUNDATION software **Questions?**



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