



## **Social Distancing Guidelines for Construction**

The Nevada Occupational Safety and Health Administration (NVOSHA) revised its social distancing measures for construction. Still, the tips could be applied in any state, especially where guidance has not been issued. NVOSHA emphasizes that construction sector businesses are to continue aggressively addressing the spread of the COVID-19 virus by following the mandatory measures. The following measures are required of businesses in the construction sector:

- Restrict meetings, safety meetings/tailgate talks, and gatherings to no more than 10 people.
- Ensure that proper social distancing is used for any gathering.
- Provide sanitation and cleaning supplies for addressing common surfaces in multiple users, mobile equipment, and multiple user tooling.
- Conduct daily surveys of changes to staff/labor health conditions. Leaders need to stay aware of the health and wellbeing of the labor force. Many employers have implemented entry surveys of labor health conditions that include temperature scans and questioning workers.
- Ensure that any identified first responders in the labor force are provided and use the needed Personal Protective Equipment (PPE) and equipment for protection from communicable or infectious disease. (29 CFR 1910.1030)
- Provide access to potable and sanitary water. (29 CFR 1926.15)

Construction industry employers in Nevada must maintain strict social distancing practices to facilitate a minimum of six feet of separation between workers. When employees are conducting tasks where six feet of distancing is infeasible or impractical, employers must perform a Job Hazard Analysis (JHA) for each task, procedure, or instance. The JHA must be equivalent in detail and scope, as identified in Federal OSHA publication 3071. Despite the employer's efforts, employees don't always follow social distancing requirements. The following measures are required of all Nevada construction sector projects and the employers involved in the project.

- Employers are required to monitor employees during break, lunch/dinner, and slack periods to ensure that they are maintaining proper social distancing protocols.
- If an employer representative identifies an instance where proper social distancing protocols are not being followed, the employee will be subject to the employer's established methods for ensuring compliance with safety rules and work practices.
- These observations apply to parking lots, staging areas, and any other location identified by the employer to be a supportive part of the overall project.

NVOSHA requests that employers distribute guidelines to all General Contractors, Subcontractors, or any other representatives, including but not limited to inspectors, utilities, vendors, material suppliers, independent contractors, or any other companies with employees present at a Nevada construction site. NVOSHA will be conducting random on-site inspections to ensure that the mandates are followed and implemented accordingly.

## EPA Researching COVID-19 Disinfection Methods, Antibody Testing

The Environmental Protection Agency (EPA) is asking for a rapid review with the Science Advisory Board to provide feedback on COVID-19 research needs identified by EPA's researchers. The researchers have already begun evaluating disinfectant efficacy on different types of surfaces in public areas that are frequently touched by multiple people, such as in subway cars. In addition, EPA researchers are collaborating with CDC researchers in several other areas, including:

- **Environmental Cleanup and Disinfection:** The researchers are currently evaluating the use of ultraviolet (UV), ozone, and steam for large-scale disinfecting needs in places like schools or office buildings. They are also evaluating whether electrostatic sprayers and foggers used with EPA-approved disinfectants can be effective at killing the virus.
- **Wastewater Virus Detection:** The researchers are studying whether SARS-CoV-2 can be detected in wastewater. They will focus on understanding how much of the virus is present, whether it is infectious, and how it moves through the wastewater system. This information will help public health agencies by acting as an early warning system and can identify if there is an outbreak in a specific community.
- **Salivary Antibody Assay Development:** The researchers are developing an easy, non-invasive, and reliable antibody assay to help determine the true infection rate across the country.

## OSHA Will Use Discretion, Consider Good Faith on Annual Training and Testing Delayed by COVID-19

With the COVID-19 pandemic, state restrictions on travel and business operations, as well as limited access to medical testing facilities, may limit the ability of employers to provide training or to conduct auditing, inspections, testing, and other services. Examples would include annual respirator fit testing, annual audiograms, and construction crane operator certification.

Under a memorandum released April 16, 2020, OSHA stated that during an inspection, Compliance Safety and Health Officers (CSHOs) should evaluate whether the employer made good faith efforts to comply with applicable standards. Where compliance was not possible, CSHOs should ensure that employees were not exposed to hazards from tasks, processes, or equipment for which they were not prepared or trained.

As part of assessing good faith efforts, CSHOs should evaluate whether the employer thoroughly explored all options to comply (e.g., the use of virtual or online training). CSHOs should also consider any alternative protections implemented or provided, such as engineering or administrative controls, and whether the employer took steps to reschedule the required annual activity as soon as possible.

Where an employer is unable to comply because local authorities required the workplace to close, the employer should demonstrate a good faith attempt to meet the requirements as soon as possible following the reopening of the workplace.

OSHA may issue citations if the employer cannot demonstrate any efforts to comply. However, where an employer made attempts to comply in good faith, the memo directs Area Offices to take such efforts into "strong consideration" in determining whether to cite a violation. Area Offices will request to see any notes on

the efforts the employer made to comply, letters, or documentation showing that providers had closed their business to support an enforcement decision.

This guidance takes effect immediately but is time-limited to the current public health crisis.

## **The ADA in the COVID-19 Era**

Picture, if you will, Supervisor Sam, who was just informed by Joe Employee, that Joe has tested positive for COVID-19. Supervisor Sam wants to take all practical measures to keep the workplace safe. Because of this, he wants to inform the rest of the workers that the disease has made its way into their facility. Also, what steps the company will take to mitigate the effects going forward. While informing the rest of the workforce of this development, Carol Coworker asks Sam, who, in particular, has tested positive. What should Sam do?

While Sam may take many steps to help deal with the situation, he (and the employer in general) is required, under the Americans with Disabilities Act (ADA), to keep employee (and applicant) medical information confidential. This means that Sam should not identify that Joe was the one who tested positive.

The ADA does not, however, interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19. But employers still need to comply with the applicable provisions of the ADA.

### **Steps to help mitigate**

- While keeping medical information confidential, there are steps employers can take to keep the workplace safe, such as the following:
- Ask about symptoms: During a pandemic, ADA-covered employers may ask employees if they are experiencing symptoms of the pandemic virus. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- Take employee temperatures: Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.
- Send sick employees home: The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.
- Require a doctor's note certifying fitness for duty before returning to work: Such inquiries are permitted under the ADA either because they would not be disability-related or because the pandemic is truly severe.
- As a practical matter, however, health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the virus.

The ADA's requirement to provide reasonable accommodations to employees also continues during a pandemic. Therefore, if an employee, for example, has a preexisting mental condition that has been exacerbated by the COVID-19 pandemic, they may now be entitled to a reasonable accommodation absent undue hardship.

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions. For example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

As with any accommodation request, employers may ask questions to determine whether the condition is a disability. Discuss with the employee how the requested accommodation would assist them and enable them to keep working; explore alternative accommodations that may effectively meet their needs, and request medical documentation if needed.

## **COVID-19 Recordability: Most Employers Get a Pass**

OSHA issued interim guidance for enforcing OSHA's 1904 workplace injury and illness recordkeeping as it relates to COVID-19. OSHA says a case of COVID-19 is a recordable illness if it meets the following criteria:

- 1) It is confirmed as a COVID-19 illness;
- 2) It is work-related (as defined by OSHA at 29 CFR 1904.5); and
- 3) It involves one or more of the general recording criteria listed in 1904.7, such as days away from work or medical treatment beyond first aid.

OSHA's definition of work-relatedness at 1904.5(a) says, "You must consider an injury or illness 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 preexisting injury or illness." Nine specific exemptions to work-relatedness apply, including an exception for cases of the common cold or flu contracted in the workplace. However, cases of COVID-19 are not eligible for that exception.

Employers in non-healthcare industries have told OSHA that they have been having difficulty determining whether cases of COVID-19 were contracted due to exposures in the workplace, and are therefore work-related. In response, OSHA now says it will not enforce its recordkeeping requirements to require these employers to make work-relatedness determinations for COVID-19 cases except where:

- 1) There is objective evidence that a COVID-19 case may be work-related; and
- 2) The evidence was reasonably available to the employer.

## **OSHA Cites Construction Contractor More Than \$170,000 After Fatal Fall**

The Occupational Safety and Health Administration (OSHA) cited a construction contractor based in Georgia for exposing employees to fall hazards after a fatal incident at a highway construction project in Atlanta. The company faces \$170,020 in penalties.

OSHA initiated the inspection after an employee suffered a fatal injury in a fall while attempting to install permanent metal decking on a bridge ramp. The Agency cited the contractor for failing to ensure employees used a horizontal lifeline system and fall protection, as required. OSHA also cited the contractor for failing to:

- Secure metal decking before allowing workers to use it as a walking surface,
- Provide fall protection training, and
- Conduct regular job site inspections to ensure the use of all applicable safety measures.

Allowing employees to work at heights without using proper fall protection increases the risk of severe or fatal injuries, and falls are a leading cause of fatalities in the construction industry. OSHA conducted its inspection in conjunction with the Regional Emphasis Program on Falls in Construction.

The company has 15 business days from receipt of the citations and proposed penalties to either comply request an informal conference with OSHA's area director or contest the findings before the independent Occupational Safety and Health Review Commission.

## **Nevada OSHA to Crack Down on Noncompliant Construction Sites**

In a recent memo, Nevada OSHA (NVOSHA) reminded construction employers of the state's social distancing mandates and said it will conduct random on-site inspections to ensure the mandates are being followed. Sites found to be noncompliant may be penalized or closed.

NVOSHA reminded affected employers of the guidelines it published on March 18 in support of the state's COVID-19 mitigation initiative. The guidelines reference construction operations and provide the following:

- Restrict meetings, tailgate talks, and gatherings to no more than 10 people;
- Establish effective social distancing protocols which ensure employees maintain a 6-foot distance from one another during meetings where 10 people or fewer are present;
- Ensure social distancing protocols are maintained during operation of mobile service equipment designed for two or more passengers, including, but not limited to, scissors lifts, man lifts, etc.;
- Provide sanitation and cleaning supplies for addressing common surfaces in multiple user mobile equipment and tooling;
- Maintain 6-foot separation protocols for labor transportation services such as buses and vans;
- Conduct daily surveys of changes to employee health conditions;

- Ensure that any identified first responders in the labor force are provided and use the needed personal protective equipment (PPE) and equipment for protection from communicable or infectious disease; and
- Provide access to potable and sanitary water.

NVOSHA said it has conducted intermittent surveys of active construction sites in the state and found that employees are still being allowed to work in close proximity (less than 6 feet of separation) to one another.

## **States Given More Time to Disqualify Drivers, Update Driving Records**

Due to disruptions caused by the COVID-19 pandemic, the Federal Motor Carrier Safety Administration (FMCSA) is giving states more time to update the driving records of commercial driver's license (CDL) and commercial learner's permit (CLP) holders who are convicted of a disqualifying offense.

Typically, states are required to update driving records within 10 days after drivers are convicted of traffic violations or lose driving privileges. States that fail to do so can lose a portion of their highway funds.

A new "Notice of Enforcement Discretion" from the FMCSA, issued April 17, 2020, says states will not risk their highway funds if they are unable to update driving records due to staffing shortages or office closures caused by the COVID-19 outbreak.

### **Four requirements are delayed**

Specifically, licensing agencies have been granted a short-term reprieve from the need to:

- Add a driver's disqualification or conviction to the driver's record within 10 days;
- Notify the driver's home state within 10 days of any disqualification or conviction in another state;
- Report a driver's conviction or license withdrawal to a national database within 10 days; or
- Disqualify drivers "as expeditiously as possible" after they commit a disqualifying offense listed in 49 CFR §383.51.

As a result, recent convictions and disqualifying offenses may be hidden from employers when they review drivers' motor vehicle records (MVRs) in the coming months. Under 49 CFR §383.31, §383.33, and §391.15, however, drivers are still required to notify their employers of traffic convictions and license suspensions.

The exemption is in effect until June 30, 2020. Still, states are expected to get back into compliance as soon as the public health emergency ends or when the state licensing agency resumes normal operations, whichever occurs first. In no case may states be out of compliance after September 28, 2020, the FMCSA says. In late March, the Agency issued a waiver allowing certain commercial drivers to continue driving despite their CDL, CLP, or medical card expiring. The waiver was issued in response to many states closing their licensing agencies due to the pandemic.

## **CVSA Publishes 2020 North American Standard Out-of-Service Criteria**

The 2020 North American Standard Out-of-Service Criteria (OOSC) was published by the Commercial Vehicle Safety Alliance (CVSA) and went into effect on April 1, 2020. The OOSC is the decision-making guide officers use to determine if a driver or vehicle with a violation will be allowed to leave the inspection site. If the violation is covered by the OOSC, the officer will require the violation to be corrected before the driver or vehicle will be allowed to continue.

### **Significant changes**

This year's OOSC includes many technical changes. The following are among the most significant:

- Drivers that have a disqualifying violation listed in the Drug and Alcohol Clearinghouse will be placed out of service (OOS). (See below for more details.)
- All references to automatic onboard recording devices (AOBRDs) were removed. Drivers will be placed OOS if found using an AOBRD in place of an ELD. While this has been the case since last December, dropping all AOBRD references clearly shows ELDs are the only compliant electronic log (though drivers do have the option to use other electronic devices when allowed to use paper logs).
- Drivers who do not have a log in Canada will no longer automatically be placed OOS for 72 hours. Once drivers provide a log that shows they are in compliance, they will be released. Note that drivers should be prepared to have their logs examined with a fine-tooth comb after receiving a violation.
- Defects involving sway bars that are not involved in axle positioning are no longer an OOS violation.
- Any missing or unsecured securement devices on the manhole cover on a tank containing hazardous materials will be considered an OOS condition.

### **Clearinghouse specifics**

When a disqualifying entry is entered in the Clearinghouse, an entry stating that the driver is prohibited from operating commercial vehicles under §382.501(a) will appear on the motor vehicle record (MVR) system that officers use. The entry will remain visible in the law enforcement MVRs until:

- The driver completes the substance abuse professional (SAP) evaluation and treatment process,
- The SAP enters the completion of the evaluation and treatment in the Clearinghouse, and
- A carrier makes an entry in the Clearinghouse, indicating the driver has passed a return-to-duty test.

### **No "soft enforcement" period**

The changes to the OOSC were developed last year, and officers were trained on using the new criteria earlier this year. As a result, there will be no "implementation" or "soft enforcement" period.

## **Washington State Adopts Federal Walking-Working Surface Rules**

On April 21, 2020, the Washington Division of Occupational Safety and Health (DOSH) adopted a final rule for Walking-Working Surfaces. The effective date of this rule is October 1, 2020.

DOSH updated chapter 296-24 WAC, *General safety and health standard*, and chapter 296-876 WAC, *Ladders, portable, and fixed*. The adopted amendments incorporate federal provisions in 29 CFR 1910.21 through 1910.30. In addition, DOSH adopted several housekeeping changes and clarifications. No additional compliance requirements were added beyond the requirements noted in 29 CFR 1910.21 through 1910.30. In January of 2017, federal OSHA issued a final rule update to General Industry Walking-Working Surfaces and Fall Protection Standards. Consequently, DOSH updated its rules to make them at least as effective as OSHA, as required by the Washington State Plan.

## **OSHA Tells Inspectors to Prioritize Coronavirus Complaints**

OSHA has released an interim enforcement response plan that provides instructions and guidance to its Area Offices and compliance safety and health officers (CSHOs) for handling coronavirus-related complaints, referrals, and severe illness reports. Workplaces, where fatalities and imminent danger exposures related to the coronavirus have occurred, will be prioritized for on-site inspections.

The response plan outlines procedures for addressing reports of workplace hazards related to the coronavirus. OSHA says that workers, who request inspections, complain of coronavirus exposure, or report illnesses may be protected under one or more whistleblower statutes and will be informed of their protections from retaliation.

The plan takes effect immediately and will remain in force until further notice.

## **Oregon OSHA Relaxes Enforcement on Annual Training, Medical Evaluations**

Due to the COVID-19 pandemic, Oregon OSHA will relax enforcement on annual training requirements and medical evaluations that become due between March 1 and June 30. For annual training requirements, operator certifications, re-certifications, and annual testing that expire between March 1 and June 30 and that require outside expertise, Oregon OSHA will accept the employer's declaration that such training is not feasible at the present time.

For annual or periodic medical monitoring (such as audiograms or blood lead level testing) and annual respirator. Fit testing that employers choose not to conduct for the safety of workers relating to COVID-19 or because medical services are not able to be conducted due to COVID-19 restrictions, rescheduling this testing after June 30 is acceptable. For initial medical monitoring and fit testing, Oregon OSHA says it will address genuine feasibility and “greater hazard” issues related to such training addressed on a case-by-case basis.

Employers are expected to continue with initial training requirements that they would ordinarily do in-house while keeping in mind social distancing and making use of teleconferencing techniques. Re-certifications and annual testing that the employer can perform in-house must still be done.

As the pandemic evolves, Oregon OSHA will periodically reevaluate the March 1 - June 30 timeframe to identify whether any additional adjustments need to be made.

## **Employers Still Need to Comply With Anti-Discrimination Laws**

Employee leave and personal protective equipment have occupied many work-related headlines lately, but employers must also remain vigilant in their non-discrimination endeavors. Laws such as Title VII of the Civil Rights Act (Title VII), the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) remain in full force.

These laws do not, however, interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps they should take regarding COVID-19. The CDC has, however, asked that people not show prejudice to people of Asian descent because of fear of the virus.

Reports on race discrimination related to the outbreak have been surfacing, and employers need to ensure that such behavior does not exist in the workplace, whether online or in a brick-and-mortar setting.

If, for example, corporate offices are far removed physically and/or organizationally from front-line employees or first-line supervisors, managers may feel (or may actually be) unaccountable for their behavior. They may act outside the bounds of workplace rules.

Some might help Managers may also be unaware of how to address harassment issues and may be reluctant to call headquarters for direction. To help reduce the risk, here are some tips:

- Ensure that compliance training reaches all levels of the organization; regardless of how geographically dispersed workplaces may be,
- Ensure that compliance training for area managers includes their responsibility for sites under their jurisdiction.
- Develop systems for employees in geographically diverse locations to connect and communicate.
- Create opportunities for isolated workers to connect with each other (e.g., in-person, online) to share concerns.
- Proactively identify current events — national and local — that are likely to be discussed in the workplace.

- Remind the workforce of the types of conduct that are unacceptable in the workplace.
- Apply workplace rules uniformly, regardless of rank or value to the employer.

Employers can help reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their national origin, race, or other prohibited bases.

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## **OSHA Issues Interim Guidance for Respiratory Protection During N95 Shortage**

OSHA has issued interim guidance for respiratory protection during the N95 filtering face piece respirator shortage. Due to the impact on workplace conditions caused by limited supplies of N95s, OSHA recommends employers reassess their engineering controls, work practices, and administrative controls to identify any changes they can make to decrease the need for N95s.

If respiratory protection must be used, employers may consider the use of alternative classes of respirators that provide equal or greater protection compared to an N95, such as NIOSH-approved, non-disposable, elastomeric respirators or powered, air-purifying respirators.

When these alternatives are not available, or where their use creates additional safety or health hazards, OSHA says employers may consider the extended use or reuse of N95s, or use of N95s that were approved but have since passed the manufacturer's recommended shelf life, under specified conditions. The interim guidance takes effect immediately and will remain in effect until further notice.

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## **OSHA Allows Use of Respirators Certified to Other Countries' Standards**

Due to the shortage of N95 respirators during the COVID-19 pandemic, OSHA says it will allow the use of respirators certified to other countries' standards. On April 6, the Agency issued interim guidance to its Compliance Safety and Health Officers (CSHOs) outlining enforcement discretion to permit the use of filtering face piece respirators (FFRs) and air-purifying elastomeric respirators that are either:

Certified under certain standards of other countries or jurisdictions:

- Australia: AS/NZS 1716:2012

- Brazil: ABNT/NBR 13694:1996; ABNT/NBR 13697:1996; and ABNT/NBR 13698:2011
- People's Republic of China: GB 2626-2006; and GB 2626-2019
- European Union: EN 140-1999; EN 143-2000; and EN 149-2001
- Japan: JMHLW-2000
- Republic of Korea: KMOEL-2014-46; and KMOEL-2017-64
- Mexico: NOM-116-2009

## **CDC Guidance on Using Masks, Though OSHA Said Masks Are Not Respirators**

The Centers for Disease Control and Prevention (CDC) issued guidance for meat and poultry processing facilities that includes information on using cloth masks, clarifying that cloth masks are not personal protective equipment (PPE).

That guidance correlates with an OSHA Letter of Interpretation dated December 20, 2017, in which OSHA was asked about employees wearing surgical masks. In the letter, OSHA stated that "Surgical masks are not considered respirators by OSHA and, as such, are not covered by 29 CFR 1910.134."

CDC recommends wearing cloth face coverings in addition to social distancing (i.e., staying at least 6 feet away from others). Cloth face coverings are intended to protect other people, not the wearer. They are not PPE and are not substitutes for PPE, such as respirators or medical facemasks (like surgical masks).

It may not be practical for workers to wear a single cloth face covering for the full duration of a work shift (e.g., eight or more hours). If cloth face coverings are worn, employers should provide readily available clean cloth face coverings (or disposable facemask options) for workers to use when the coverings become wet, soiled, or otherwise visibly contaminated.

- Employers who determine that cloth face coverings should be worn in the workplace, including to comply with state or local requirements for their use, should ensure the cloth face coverings:
- Fit over the nose and mouth and fit snugly but comfortably against the side of the face;
- Are secured with ties or ear loops;
- Include multiple layers of fabric;
- Allow for breathing without restriction;
- Can be laundered using the warmest appropriate water setting and machine dried daily without damage or change to shape (a clean cloth face covering should be used each day);
- Are not used if they become wet or contaminated;
- Are handled as little as possible to prevent transferring infectious materials to the cloth; and
- Are not worn with or instead of respiratory protection when respirators are needed.

## **FMCSA: Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License**

**SUMMARY:** FMCSA proposes to prohibit State Driver's Licensing Agencies (SDLAs) from issuing, renewing, upgrading, or transferring a commercial driver's license (CDL), or commercial learner's permit (CLP), for individuals prohibited under current regulations from driving a commercial motor vehicle (CMV) due to a controlled substance (drug) and alcohol program violations. The CMV driving ban is intended to keep these drivers off the road until they comply with return-to-duty (RTD) requirements. FMCSA also seeks to comment on alternate proposals establishing additional ways that SDLAs would use information obtained through the Drug and Alcohol Clearinghouse (Clearinghouse), to increase compliance with the CMV driving prohibition. Further, the Agency proposes to revise how reports of actual knowledge violations, based on a citation for Driving Under the Influence (DUI) in a CMV, would be maintained in the Clearinghouse. These proposed changes would improve highway safety by increasing compliance with existing drug and alcohol program requirements.

**DATES:** Comments on this document must be received on or before June 29, 2020, published in the *Federal Register* April 28, 2020, page 23670.

## **Emergency Evacuations: Exits and Maps**

Our subject matter experts regularly get questions on whether OSHA requires employers to post emergency exit route maps, and on the minimum distance between exits. Those questions are answered below.

### **Are maps of evacuation routes required?**

OSHA doesn't actually require employers to post evacuation maps but does strongly recommend them. The regulations don't mention maps, but the non-mandatory Appendix to Subpart E says maps should be part of the employer's planning:

The use of floor plans or workplace maps which clearly show the emergency escape routes should be included in the emergency action plan. Color coding will aid employees in determining their route assignments.

In addition, OSHA Publication 3088 on evacuations says that an emergency action plan must include:

***Emergency escape procedures and route assignments, such as floor plans, workplace maps, and safe or refuge areas;***

The Appendix suggests that exit route maps would help, and Publication 3088 lists "maps" as an option. OSHA doesn't explicitly require maps, but they are an excellent way to show exit routes to employees and visitors.

Employers can determine how many maps they want and where to post them. There is no requirement on where to display them.

Employers should check with a local fire marshal for any code requirements. The OSHA regulations cover only employees, not visitors; local codes may cover places of business that are open to the public.

### **What is the minimum distance between emergency exit doors?**

Oddly enough, there is no specified distance between exits, so two exits might be reasonably close to each other, particularly in a smaller facility. Generally, at least two exits are required, but the total number of exits required is based on the number of people (occupancy load).

Beyond that, only travel distance to the nearest exit is addressed. A typical maximum distance would be 150 to 200 feet per NFPA 101 (which OSHA has incorporated), depending on whether the facility has overhead sprinklers. However, the distance could be as short as 75-feet where flammable materials are stored, such as combustible liquids stored according to NFPA 30.

Again, employers may want to contact a local fire marshal if they have concerns that exit locations might be problematic.

## **Should I Be Worried About a Missing DVIR?**

We've all heard "my dog ate my homework" as a reason for a missing (or simply not completed) assignment.

Have you ever heard a similar excuse when asking a driver about a missing driver's vehicle inspection report (DVIR)? And if your driver can't produce a DVIR, do you immediately dread the potential ramifications?

While no motor carrier wants to admit to an auditor that some paperwork is missing, one omission may not be a crushing mistake.

### **Missing DVIRs not unusual**

There is generally no reason to be worried about one missing DVIR. Of course, that could change if that one missing DVIR was the key that otherwise would have prevented a fatal crash, for example. But under normal circumstances, it's not unusual for a DVIR to go missing. The FMCSA even addresses it in its official guidance: "Question 14: In instances where the DVIR has not been prepared or cannot be located, is it permissible under §396.11 for a driver to prepare a DVIR based on a pre-trip inspection and a short drive of a motor vehicle?"

"Guidance: Yes. §396.11 of the FMCSRs place the responsibility on the motor carrier to require its drivers to prepare and submit the DVIR. If in unusual circumstances, the DVIR has not been prepared or cannot be located, the motor carrier may cause a road test and inspection to be performed for safety of operation and the DVIR to be prepared."

### **Consequences of a missing DVIR**

Failure to have a required DVIR is considered a “critical” violation. That means if the violation is discovered during an audit, it should only harm the outcome of the audit if you are missing 10 percent or more of your DVIRs. The violation would only be found if you were audited within 90 days of the violation since you can discard your DVIRs after 90 days.

### **DVIRs not always required**

Finally, note that under federal rules, DVIRs are only required of truck drivers when they find or know of a vehicle defect that needs reporting. So, the absence of a DVIR for a given day would signify that there were no defects on the vehicle.

However, consider if there was a defect noted on a DVIR and the DVIR was lost, but you have other maintenance paperwork indicating that a defect was repaired at the end of that day. If a roadside inspection report on the next day indicates that a major defect was found, that raises the chances that the missing-DVIR violation will be discovered during an audit.

Make sure your drivers and operations staff establishes a process to keep track of DVIRs to ensure that nothing gets lost, and no dogs get unfairly blamed for missing documents

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## **Start Evaluating Actions For a COVID-19 Post-Response Evaluation**

Employers have taken extraordinary steps to deal with the COVID-19 pandemic. Whatever role you play in these efforts as a safety manager, remember to continually evaluate the actions you and your company are taking. Even while a crisis is ongoing, making notes about potential issues and challenges will better prepare you for post-emergency response evaluation.

At some point, your company will likely meet to evaluate what was done well, what could have been done differently, and what plans are needed to prepare for the next event. This analysis should include individuals with a strong understanding of emergency response actions, which likely includes the safety manager.

The evaluation may involve having others examine your decisions, so expect to receive some constructive feedback. Analyzing how you made decisions will help prepare for this. In addition, you’ll likely provide feedback on how others performed, so plan to do so diplomatically.

### **Questions to Consider**

The format of a post-emergency evaluation will differ for each company, but some questions that might be asked will likely include the following:

- Was the scope of the situation understood, or did it continually develop? As new information became available, how quickly did the company respond?
- What steps were taken to evaluate the accuracy of available information? Was there a process for taking action based on incomplete data?
- Were delays caused by getting key decision-makers together? What actions were managers below the executive level authorized to take? Were requests considered in a timely manner?
- How quickly were decisions communicated throughout all levels and locations? Was key contact information available and current?
- Did the company look to existing plans or policies? Were the plans current and available to key individuals? What changes may be needed for greater flexibility (such as adding multiple response options based on severity)?
- Were resources allocated efficiently? Was anything critical overlooked? What resources are needed (or can be gathered) to prepare for the next event?
- What alternative suppliers were considered, and are there contingency plans if those alternatives are not available?

Did the company seem to take a reactive approach, or was a long-term goal developed?

You cannot know the nature or severity of the next event, but you can be certain that another event will occur. Evaluating how well the company responded to this crisis, and evaluating what changes are needed will better prepare the organization to get through the next situation.

## **EPA Offers Tips on Safe Disinfectant Use, Warns of Fraudulent Products**

The Environmental Protection Agency (EPA) is continuing to provide information on surface disinfectant products that can be used during the COVID-19 public health emergency. The Agency now has nearly 400 products that have qualified to be effective against SARS-CoV-2, the virus that causes COVID-19.

When using an EPA-registered surface disinfectant, always follow the product's directions and remember:

- Never apply the product to yourself or others. Do not ingest disinfectant products. Never apply any product on List N (the EPA's list of disinfectants) directly to food.
- Never mix products unless specified in the use directions. Certain combinations of chemicals will create highly toxic acids or gases.
- Wash the surface with soap and water before applying disinfectant products if the label mentions pre-cleaning.
- Follow the contact time listed for your product on List N. This is the amount of time the surface must remain visibly wet to ensure efficacy against the virus. It can sometimes be several minutes.

- Wash your hands after using a disinfectant. This will minimize your exposure to the chemicals in the disinfectant and the pathogen you are trying to kill.

The Agency also announced that it is advising eight technology companies (online retailers) that unscrupulous dealers are using their platforms to sell illegal disinfectant products. The Agency contacted the companies to ask for help in preventing impostor products from coming to market and to remove those products from their sites.

Products that claim to kill or repel viruses, bacteria, or other germs are considered pesticides and must be registered with the EPA prior to distribution or sale. Unregistered disinfectants may be ineffective against the virus that causes COVID-19. EPA is urging consumers to see the Agency's list of approved disinfectant products at [epa.gov/coronavirus](https://www.epa.gov/coronavirus).

## **Truck Driving Is The Deadliest Job, But it Doesn't Have To Be**

Not surprisingly, crashes are the leading cause of death for truck drivers, serving as a reminder that preventing crashes — and increasing the chances of crash survival — are critical to driver safety.

When government crash data is taken into consideration, the following actions may provide the “biggest bang for the buck” in terms of reducing fatalities:

### 1) **Use seat belts**

In fatal crashes involving large trucks in 2018, roughly 40-50 percent of truck drivers were not belted. Company enforcement of the seat-belt rule in §392.16 can help drivers protect themselves.

### 2) **Slow down**

Speeding was the most common driver-related factor for large-truck drivers involved in fatal crashes in 2018. Require drivers to obey the speed limits and adjust their speed to match the situation.

### 3) **Use extra care in construction zones**

More than 30 percent of fatal work-zone crashes in 2018 involved a large truck. Consider training your drivers on how to safely approach and navigate road construction zones.

### 4) **Avoid impairment**

Positive drug tests after fatal accidents are on the rise, as is the percentage of truck drivers in fatal crashes with a blood-alcohol content of 0.01% or higher (reaching 4.6% in 2018). Drivers are prohibited from using alcohol within four hours of going on duty or while on duty, and cannot take controlled substances without a valid prescription from a physician familiar with the driver's role.

### 5) **Avoid distraction**

Drivers rarely admit to engaging in distracted driving, but the practice has been on the rise for years among all drivers. You can help curb the trend by adopting and enforcing a robust anti-distraction policy and educating your drivers on the policy and on the hazards of distracted driving. Texting and hand-held cell-phone use while driving are prohibited under §392.80 and §392.82, but they're also incredibly unsafe. Help your drivers to understand the risk they take with their lives and others by picking up a

phone or engaging in other distracting behaviors on the road.

#### 6) **Fight fatigue**

Enforce compliance with the hours-of-service limits — auditing your drivers' logs, supporting documents, and time records to verify compliance — and correct and re-train drivers who violate the rules. Also, consider going above and beyond by adopting a fatigue management program. Such a program can help prevent fatigued driving even when HOS limits are being followed. The program can address time-of-workday changes, accumulated fatigue, time-on-task fatigue, and shipper and receiver delays, and can take driver input into consideration.

Truck driving is one of the nation's deadliest jobs, but steps can be taken to limit the most common causes of fatal crashes. Remind drivers regularly that safety should be their number one priority.

## **FMCSA Proposes to Remove CDL Privileges for Unresolved FMCSA Testing Violations**

Clearinghouse as a means of removing driving privileges from commercial driver's license (CDL) holders who have unresolved drug or alcohol testing violations. Under a newly proposed rule, state driver's licensing agencies (SDLAs) would be prohibited from issuing, renewing, upgrading, or transferring a CDL or commercial learner's permit (CLP) for individuals subject to return-to-duty (RTD) requirements after a testing violation.

Testing rules prohibit CDL drivers with violations under Part 382 from operating a commercial motor vehicle (CMV) until specific steps in the RTD process are completed. The proposed rule ties the RTD status appearing in the Clearinghouse with CDL privileges.

### **Checking for and acting on violations**

All states would be required to check the Clearinghouse for restrictions when a driver applies for transfers, upgrades, or renews a CDL or CLP. The FMCSA also wants states to take action against drivers who are not due to have any contact with the SDLA. The proposal suggests two models SDLAs can use to obtain information from the Clearinghouse:

- **Data pull.** An SDLA could choose a schedule of its own making to check Clearinghouse data on its current CDL and CLP holders. The state could grab the data on an annual basis, for instance.
- **Data push.** This model "pushes" new data to the SDLA whenever information is added to the Clearinghouse about one of its CDL drivers who has committed a testing violation. This is the FMCSA's preferred option.

Whether using a push or pull model, the proposed rule requires that the state agency disqualify the driver until he or she provides proof of a completed RTD process.

## **DUIs in CMVs**

The proposed rule would also revise how reports of “actual knowledge” violations, based on a citation for driving under the influence (DUI) in a CDL-required CMV, would be maintained in the Clearinghouse. Employers currently report these traffic citations to the Clearinghouse. Drivers who are ultimately cleared of the DUI, however, can get the report removed from the database.

The proposal would keep the employer’s report in the database, regardless of whether the driver is ultimately convicted of the offense. The definition of “actual knowledge” in §382.107 is not contingent upon a conviction. All violations identified in Part 382, Subpart B, must be reported and retained in the Clearinghouse and would provide fairness to drivers and full disclosure to employers. Drivers who are not convicted of the offense of DUI in a CMV could petition FMCSA to add documentary evidence of that fact to their Clearinghouse record.

## **How to submit comments**

Interested parties may submit comments on the proposed rule using the following methods:

- Federal eRulemaking Portal: [regulations.gov](https://www.regulations.gov).
- Mail: Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand delivery or courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- Fax: (202) 493-2251.

When submitting comments, please identify them by Docket Number FMCSA-2017-0330. Comments must be received on or before June 29, 2020.

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## **New Guidance for Cleaning and Disinfecting Workplaces**

The Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) released updated guidance with step-by-step instructions to help employers and families properly clean and disinfect spaces. To prepare for reopening, the guidance recommends developing and implementing a plan, then revising it as needed.

Cleaning and disinfecting surfaces is a two-step process. First, clean the surface or object with soap and water. Then, disinfect using an EPA-approved disinfectant.

EPA has compiled a list of disinfectant products, including sprays, concentrates, and wipes that can be used against COVID-19. Always follow the product label instructions and safety information, including leaving the product on the surface long enough to kill germs. If products on the EPA list are not available, use 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions to disinfect.

Some tips from the guidance include:



- Outdoor areas generally require regular routine cleaning and do not require disinfection.
- If your workplace or business has been unoccupied for 7 days or more, it will only need your regular routine cleaning to reopen the area. The virus that causes COVID-19 has not been shown to survive on surfaces longer than this time.
- Some surfaces only need cleaning with soap and water. For example, surfaces and objects that are not frequently touched should be cleaned but do not require additional disinfection.
- Surfaces frequently touched by multiple people such as door handles, desks, phones, light switches, and faucets should be cleaned and disinfected at least daily. More frequent cleaning and disinfection may be required based on use. For example, shopping carts and point of sale keypads should be cleaned and disinfected before each use.
- Consider what items can be removed to reduce frequent handling or contact from multiple people. Soft and porous materials, such as area rugs and seating, may be removed or stored to reduce the challenges with cleaning and disinfecting them.

This guidance does not replace other measures that still need to be taken to reduce the risk of exposure to COVID-19. It is essential to continue to practice social distancing, wear cloth face coverings, and wash your hands frequently.

