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COVID-19 Exposure Control and Response Plan: What Is It and Why Do You Need One?

As states across the country begin to loosen or lift stay-at-home and shutdown orders, many workplaces that had been idled, have just begun to or will soon resume operations. Many states and localities are setting as a precondition for businesses to reopen, a requirement that they develop and implement a written, site-specific COVID-19 Exposure Control and Response Plan.

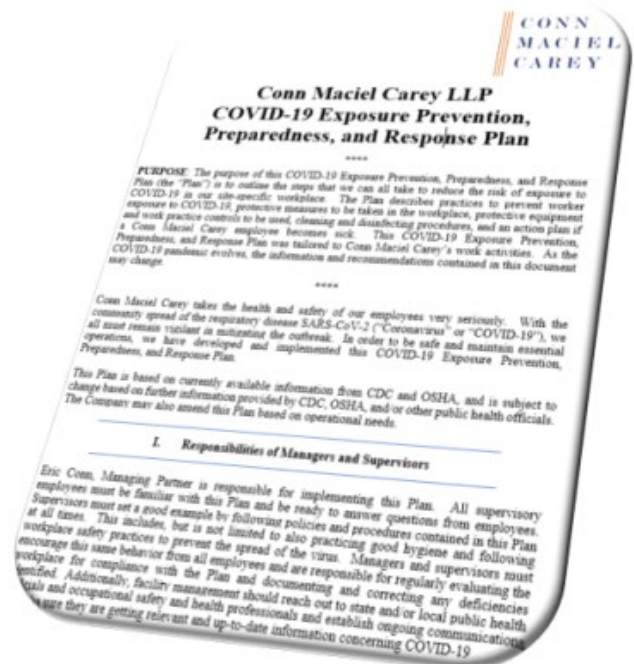
Regardless of any state or local requirements to develop such a plan, any business that operates without an Exposure Control Plan is setting itself up for OSHA citations, being shutdown by a state or local agency, and/or making itself a target for wrongful death actions brought by the families of employees, temporary workers, customers, vendors and/or guests. They should also plan on dealing with a workforce that is scared and anxious about the company's response to the COVID-19 pandemic, and thus refusing to work and making regular and frequent complaints to OSHA that will have to be answered, and bringing difficult-to-defend (because of the lack of an exposure control plan) retaliation claims under Section 11(c) of the OSH Act.

There are reasons aplenty, but we focus below on the five key reasons employers must develop a written COVID-19 Exposure Control and Response Plan. But first, what is an exposure control plan?

What is an Exposure Control and Response Plan?

When OSHA identifies a serious safety or health hazard, it usually requires employers to develop a written program including the measures employers will take to counteract the hazard. For example, OSHA requires written lockout/tagout programs to protect against hazardous energy, respiratory protection programs or process safety management programs to protect against hazardous chemicals. Simply put, a COVID-19 Exposure Control Plan is a written safety plan outlining how your workplace will prevent the spread of COVID-19, covering issues such as:

- How you will facilitate social distancing in your workplace
- What engineering or administrative controls you will implement when workers cannot remain at least 6' apart.
- The steps that you will take to ensure employees comply with personal hygiene practices.



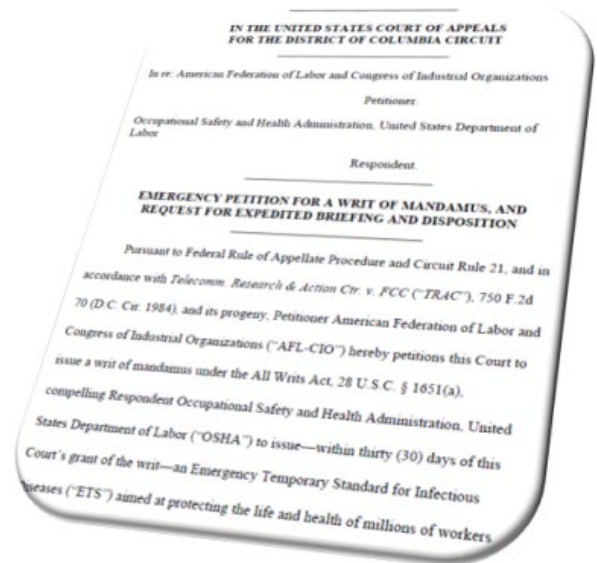
- What types of protective equipment you will provide for various tasks.
- Enhanced housekeeping protocols for frequently touched surfaces, tools, and machines.
- What you are doing to prevent/screen sick workers from entering the workplace.
- How you will respond to confirmed or suspected cases among your workforce.
- How you will communicate these and other measures to your workforce.

Five Reasons to Develop a Written COVID-19 Exposure Control Plan

First, whether you have remained open because you are an essential business or plan to reopen soon, you may soon find yourself required to adopt such a plan by virtue of an executive order by the governor of the state in which you operate or, in some cases, pursuant to orders issued by city or county officials.

- On May 15th, New York’s governor, Andrew Cuomo, announced as part of the state’s reopening plan that “[e]very business is required to develop a written plan that puts the safety of their customers and employees first.” While this plan does not need to be submitted to a NY state agency for approval, it must be retained on the premises of the business and must be made available to the NYS Department of Health or local health and safety authorities in the event of an inspection.
- On May 1st, the Governor of Puerto Rico issued a similar requirement as we explained in this [blog post](#).
- On May 18th, the Governor of California [issued new guidance](#) for workplaces that are now allowed to re-open, which calls for a site-specific COVID-19 prevention plans.
- Other states and counties are certain to follow suit.

Second, both OSHA and the CDC recommend that you adopt such a plan. OSHA enforcement of COVID-19 issues will be under the agency’s catch-all General Duty Clause, and when OSHA issues General Duty Clause citations, it references recognized guidance the employer did not meet, including OSHA’s own guidance. Moreover, while the US Senate and House of Representatives remain at loggerheads, you can expect continued pressure on OSHA from various stakeholders—Congress, unions, and other workplace safety advocates—to issue an emergency temporary infectious disease standard. Indeed, this week, [AFL-CIO filed a lawsuit in federal court against OSHA to try to force the agency to issue an emergency temporary COVID-19 standard](#), which would require all employers to develop and implement an infection control and response plan.



Since the pandemic reached the US, OSHA has received thousands of employee complaints about their employers’ responses or lack of responses to the new health hazard. In response to the wave of employee complaints, OSHA has been engaging with employers, by requesting the employer respond and explain its efforts to address Coronavirus in the workplace. An ineffective response to OSHA will result in an enforcement inspection, and the key to an effective response is a coherent, written Exposure Control Plan.

Third, going through a deliberate and focused process to develop a plan significantly enhances the likelihood that you will not overlook a valuable protective measure, just as having a plan in place will serve as a ready reference source for managers and workers alike should they have questions or concerns.

Fourth, with in-person communication and training sessions discouraged if not fully discontinued, having a written exposure plan ensures that the managers responsible for implementing and enforcing these safety measures understand what is expected of them. At the same time, a written plan serves as a means of letting workers know what steps you are taking and what they can and should do to keep the workplace safe. Establishing a communication plan for employees, visitors, and customers also creates a consistent means to provide updated information to these groups—each of which is essential to your continued operation.

Fifth, OSHA citations are not the only risk that you face without a customized exposure control plan. While lawyers have already started filing wrongful death actions on behalf of workers who believe they contracted COVID-19 at work in an effort to obtain recovery outside the workers' compensation system, employers may also face litigation involving claims that customers, vendors, contractors, or patients who visited your establishment contracted the virus from one of your employees. Family members of your employees may also bring such claims, alleging that they got sick because your employee contracted the virus at work and then infected members of their family.

As a boutique law firm focused on Workplace Safety and Labor & Employment Law, Conn Maciel Carey has been working with our clients since the beginning of this crisis to develop customized COVID-19 Exposure Control Plans. In most cases, we hold a series of conference calls with leadership, HR, safety, and operations after which we provide a customized exposure control plan that will help protect employees and customers, and to provide a line of defense against all of the regulatory and tort liability that is mounting every day. If you would like help developing such a plan, please contact any of the [attorneys at Conn Maciel Carey](#).

For additional resources on issues related to COVID-19, please visit Conn Maciel Carey's COVID-19 FAQ Page for an extensive index of frequently asked questions with our answers about HR, employment law, and OSHA regulatory related developments and guidance. Likewise, subscribe to our Employer Defense Report blog and OSHA Defense Report blog for regular updates about the Labor and Employment Law or OSHA implications of COVID-19 in the workplace. Conn Maciel Carey's COVID-19 Task Force is monitoring federal, state, and local developments closely and is continuously updating these blogs and the FAQ page with the latest news and resources for employers.

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