Protecting Your Workforce: OSHA and Workers' Comp Incidents and Guidance

Presented by:

Jennifer Hann Harrison and Conor H. Meeks

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Guidance Outlining Practical Ways Employers Can Protect their Workplaces

Presented by:

Conor H. Meeks

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Complying with Government Directives

- Responsible RestartOhio
- Healthy at Work, Reopening Kentucky
- Back on Track Indiana, Roadmap to Safely Reopen Indiana
- **Keep in mind:**
  - State-by-State requirements
  - Local restrictions
    - i.e., some local jurisdictions required residents to stay at home longer than state order

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What Does the Ohio Plan Require?

- Daily health assessments or self-evaluations of employees, handwashing, social distancing, sanitizing throughout the day and between shifts, limiting capacity, masks required for employees (with some exceptions) and recommended for clients and customers

  - https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/

  - Questions can be directed to counsel or 1-833-4-ASK-ODH

What Does the Kentucky Plan Require?

- Social distancing, masks unless working alone or health or safety risk, hand sanitizer and hand washing stations, sanitation, daily temperature/health checks, designated Health at Work officer

  – https://govstatus.egov.com/ky-healthy-at-work#MinimumRequirements

  – Questions can be directed to counsel or HealthyAtWork@ky.gov

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What Does the Indiana Plan Require?

- Employers must develop a plan to implement measures and institute safeguards to ensure a safe work environment

  - Employee health screening process, enhanced cleaning and hygiene measures, face masks recommended, social distancing

  - CDC and IOSHA guidelines

  - Indiana - Critical Industries Hotline, for business and industry questions only: 877-820-0890 or covidresponse@iedc.in.gov

  - https://backontrack.in.gov/

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OSHA Enforcement

- OSHA <u>does not</u> have a specific standard for infectious disease or pandemic preparedness/response
  - But, OSHA can use the general duty clause
- Other standards may apply:
  - **Personal Protective Equipment (PPE) requirements**, such as eye/face, respiratory, and hand protection (29 CFR 1910.132-134, 138)
  - **Sanitation/housekeeping requirements** (29 CFR 1910.141)
  - **Access to employee medical and exposure records** (29 CFR 1910.1020)
  - **Bloodborne pathogens** (29 CFR 1910.1030)
  - **Hazard communication** (29 CFR 1910.1200)
  - **Injury and illness recordkeeping and reporting** (29 CFR Part 1904)

OSHA's Initial Interim Enforcement Response Plan for COVID-19 *(April 13, 2020)*

- Inspections of COVID-19-related complaints of workplace hazards limited to high and very high risk jobs/workplaces
  - e.g., hospitals treating COVID-19 cases, first responders, biomedical laboratories, etc.
- Otherwise area offices were to use rapid response investigations (RRI)
- On-site inspections were to be done virtually to the extent possible, limited in-person enforcement activity

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OSHA's Updated Interim Enforcement Response Plan for COVID-19 *(May 26, 2020)*

- OSHA authorized area offices to resume regular on-site inspection planning in geographic areas where infection rates are declining
  - Continue using non-formal phone/fax investigations or RRI where OSHA has historically done so (i.e., to address complaints)

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OSHA's Updated Interim Enforcement Response Plan for COVID-19 *(May 26, 2020)*

- In geographic areas experiencing sustained elevated community transmission or resurgence of infection rates, area offices to:
  - "Continue prioritizing COVID-19 fatalities and imminent danger exposures for inspection. Particular attention for on-site inspections will be given to high-risk workplaces, such as hospitals and other healthcare providers treating patients with COVID-19, as well as workplaces with high numbers of complaints or known COVID-19 cases."

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OSHA's Updated Interim Enforcement Response Plan for COVID-19 *(May 26, 2020)*

- In geographic areas experiencing sustained elevated community transmission or resurgence of infection rates, area offices to:
  - Conduct remote inspections where resources limited (defer on-site until resources allow)
  - Use RRI if resources substantially limited, develop program to conduct monitoring inspections for sites where no on-site or remote inspection done
  - Continue using non-formal phone/fax investigations instead of on-site in industries where doing so can address the hazard(s)

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Consider Actual Company Needs

1. **Don't Move Too Fast**
    Just because you are permitted to reopen, that does not mean that everyone should return to the workplace

2. **Productivity**
    Some employees may be just as productive while working remotely

3. **Essential Sectors First**
    Essential job functions that cannot be conducted remotely should be first priority for returning to the workplace

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Consider a Phased Approach

- Different types of phased approaches for returning to work:
  - Prioritize essential sectors first
  - Allow employees to return on a voluntary basis
  - Alternate schedules or stagger shifts
  - Have specific employees serve as a "skeleton staff"

> *Of paramount importance is good communication. The safer the employee feels about being in the workplace, the more likely he or she will embrace returning to the workplace.*

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Change the Way You Do Business

Four Important *Safety* Changes

1. Eliminate Unnecessary In-Person Meetings

2. Restrict Third Party Visits

3. Restrict Unnecessary Travel

4. Enforce Social Distancing Policies

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Specific Types of Employees

- Employees impacted by school and child care closures

- Employees who depend on public transportation (high-risk COVID areas)

  – Offer incentives such as parking reimbursement or single occupancy ride shares

  – Allow employees to shift their hours to commute during less busy times

- Employees who are at ***higher risk for severe illness***

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Employees at Higher Risk for Severe Illness

- Recent CDC Guidelines
  - COVID-19 creates higher risk for severe illness for older adults (over 65) and people with "serious underlying medical conditions"

  - Chronic lung disease, severe asthma, serious heart conditions, immunocompromised systems, severe obesity (BMI 40 or higher), chronic kidney disease (dialysis), liver disease

  - CDC encourages employers to "support and encourage options to telework if available" and offer such workers duties that "minimize their contact with customers and other employees"

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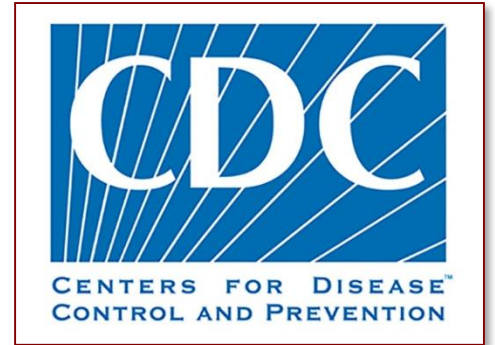
Employees at Higher Risk for Severe Illness

- Recent EEOC Guidelines (which are updated frequently)
  - **ADA Considerations** – generally employers cannot make disability-related inquiries except under limited circumstances, such as where there is a "direct threat" – a significant risk of substantial harm to self or others even with a reasonable accommodation
  - **COVID-19 Pandemic Standards (which have been triggered for now)**
    - Relaxes certain ADA standards during a pandemic and allows employers to make certain inquiries to maintain a safe workplace.
  - ***What to do with this information?*** Depending on circumstances (which differ for each person), may need to engage in interactive process and consider telework as a reasonable accommodation

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Return to Work Protocol & Procedures

Employers should:

- ✓ Implement and enforce infection control practices and procedures

- ✓ Inform employees of the safety or prevention measures they have taken

- ✓ Provide employees with the protocols that employees are expected to follow

- ✓ Provide employees RTW training

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Workplace Hazard Assessments

- Conduct hazard assessment of the workplace and job tasks to determine risk levels and necessary precautions
- PPE selection and provision
  - What PPE must employers pay for?
  - What type of masks to use?
    - Voluntary versus mandatory?
    - Determine whether a written respiratory protection plan is necessary
  - PPE cleaning protocols
  - Employee training
  - What to do if you encounter supply issues
  - Enforcement of PPE requirements is critical

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Social Distancing Considerations

- Analyze workplace modifications required to maintain social distancing

- Consider new workspace layout or physical barriers between work stations

- Consider new working time arrangements

- Consider use of face coverings

6 feet

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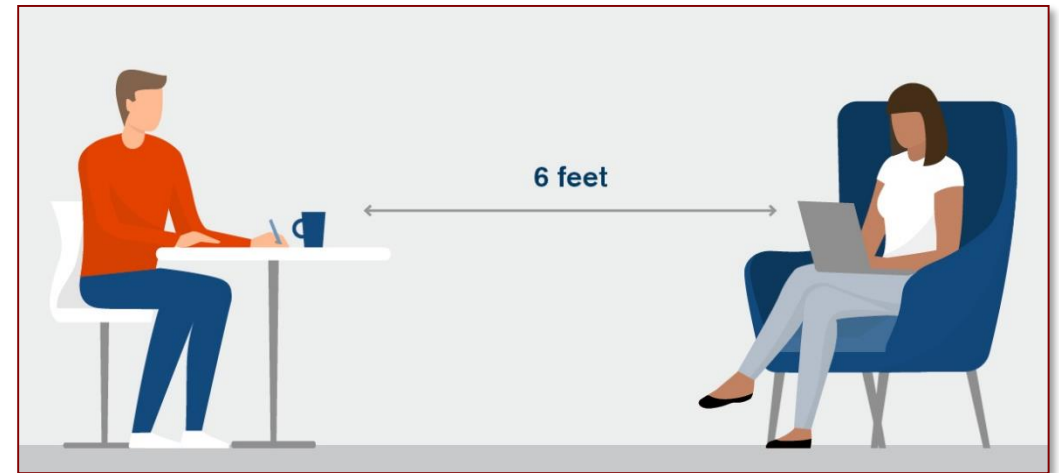
Sanitation and Hygiene

- Promote proper handwashing and hygiene

- Advise employees not to shake hands, fist bump, etc

- Provide cleaning supplies in common areas and at work stations throughout the facility

- Hand sanitizing stations in common areas and throughout the work place

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Other Precautions & Preventive Measures

- Consider other administrative or engineering controls that may be necessary to protect workers and enforce social distancing
  - Physical barriers
  - HVAC/ventilation adjustments, maintenance schedules, etc.
  - Adjust fans to avoid cross-contamination of workspaces
  - Adjustments to traffic patterns in tight office spaces
  - Move or modify alignment of workspaces along assembly lines
  - Use markings and signage to emphasize protocols and worker positioning

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Health Screening & COVID Testing

- Employers may test employees before they enter the workplace to determine if they are infected with the virus

- Employers must ensure that tests are accurate and reliable

- Request that employees entering the workplace self-monitor and report any COVID-19 symptoms – certifications

- Employees to notify supervisor and go home

- Keep employee medical records in a separate file

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Taking Temperatures

- Employers can measure employees' body temperature

- Temperature check options

- Notify employees of temperature screening in advance

- If testing is done onsite, how to maintain social distancing for employees waiting to be tested

- Send home any employee with an elevated temperature

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Communication is Key!

- Communication with employees is critical
  - Provides guidance and direction for everyone
  - Creates a sense of security and peace of mind
  - Open dialogue to avoid potential claims
- Educate employees on workplace reentry, operating, and health and safety protocols
  - Encourage open line of communication with response team or point person(s)
  - Provide training on relevant safety issues, and frequent reminders on safety and health protocols
- Be cognizant of potential for retaliation claims when making personnel decisions

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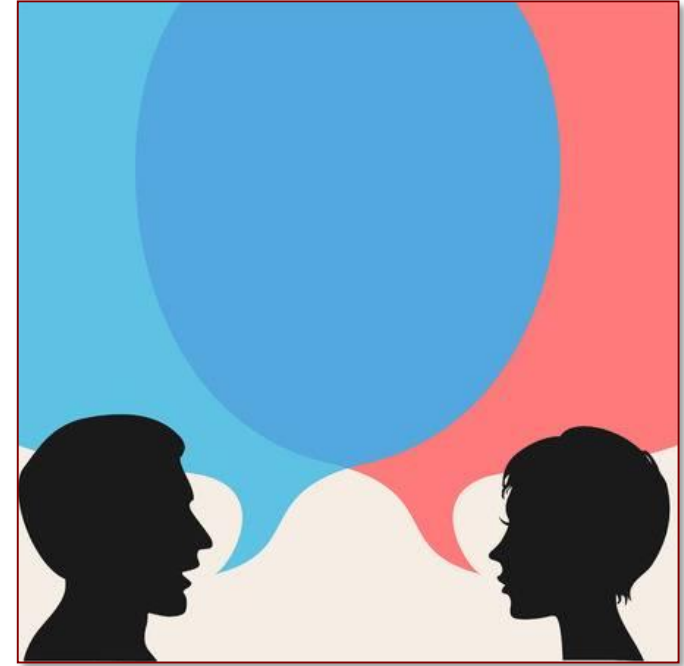
What If an Employee Displays Symptoms or Tests Positive for COVID-19?
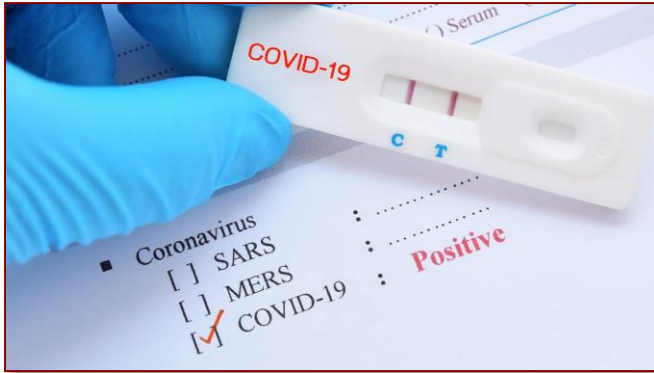
- Send the employee home immediately
- Engage in contact tracing and consider restrictions of those impacted
- Deep clean the workplace
- Report confirmed cases to local health department
- Notify those with potential exposure – Confidentiality is KEY!
- Determine whether any OSHA recordkeeping obligations exist
  - All employers must make a reasonable and good faith effort to determine whether an infection is work-related
  - Follow OSHA's published guidelines, document the analysis of each case

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Questions?

Conor H. Meeks

Associate, Taft Cincinnati

Employment & Labor Relations

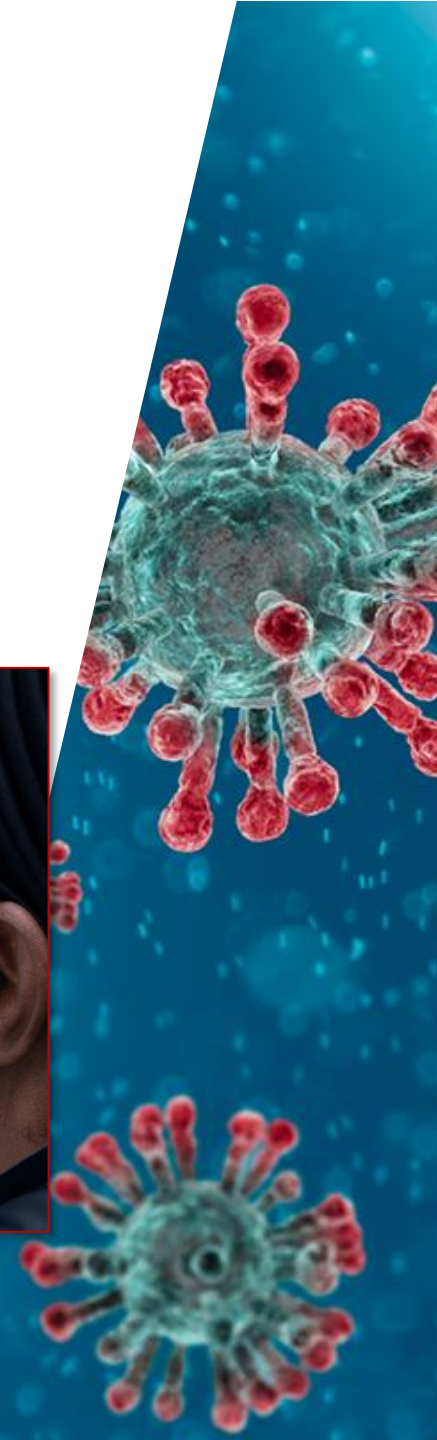cmeeks@taftlaw.com / (513) 827-3883

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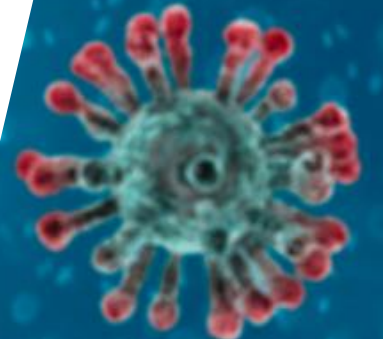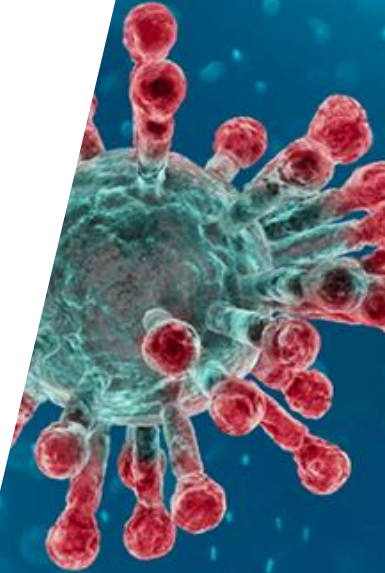
COVID-19 Issues in Workers' Compensation

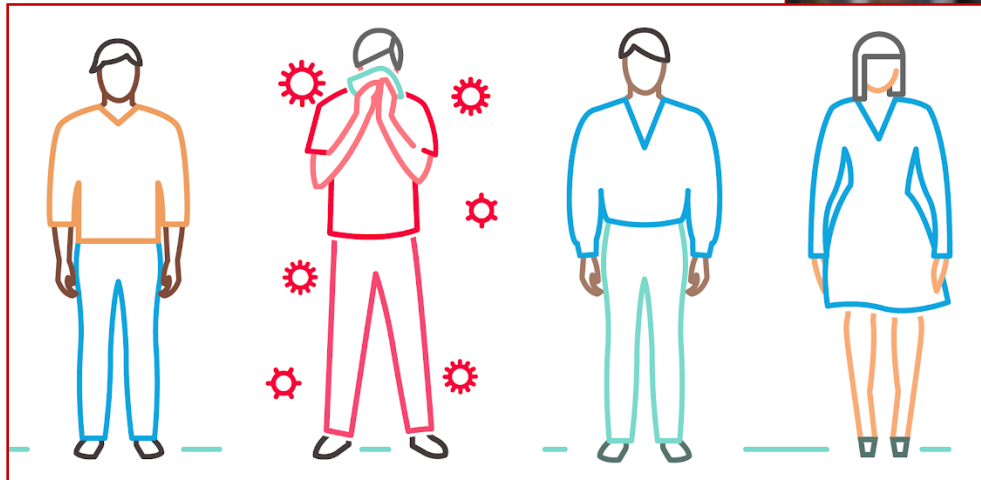Presented by:

Jennifer Hann Harrison

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Elements of a Workers' Compensation Claim

- Diagnosis

- Statement from medical provider

- Arising out of

- In course of

- Rebuttable presumption?

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Investigating & Defending Workers' Compensation Claims of COVID-19

- Special hazard?

- Contact tracing

- PPE policy/procedures

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Working from Home During COVID-19

- Arising out of
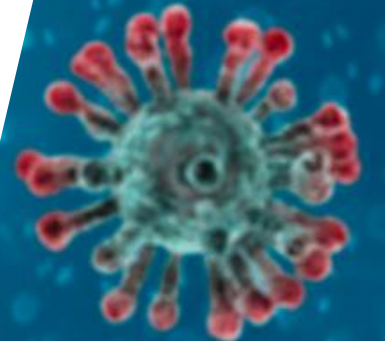
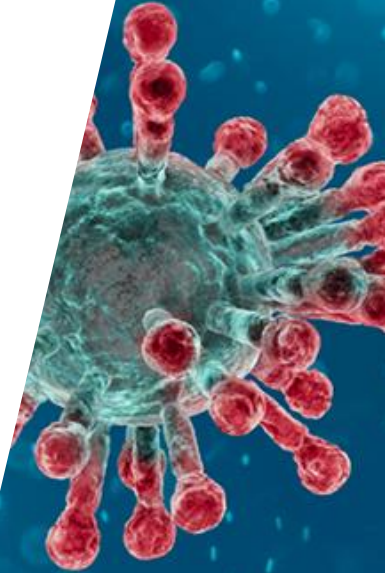- In the course of

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Questions?

Jennifer Hann Harrison

Partner-in-Charge, Taft Dayton

Workers' Compensation Partner

jharrison@taftlaw.com / (937) 641-1756

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