

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

Presented by:

**Jennifer Hann Harrison and Conor H. Meeks**

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**Taft/**

# **Guidance Outlining Practical Ways Employers Can Protect their Workplaces**

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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



# 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](mailto:HealthyAtWork@ky.gov)



# 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](mailto:covidresponse@iedc.in.gov)
  - <https://backontrack.in.gov/>



# OSHA Enforcement



- OSHA does not 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



# 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)

# 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.”

# 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)

# 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

# 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.***

# Change the Way You Do Business

## Four Important *Safety* Changes

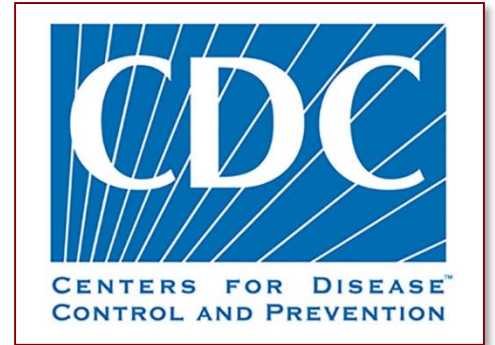
1. Eliminate Unnecessary In-Person Meetings
2. Restrict Third Party Visits
3. Restrict Unnecessary Travel
4. Enforce Social Distancing Policies

# 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***

# 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”





# 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

# Return to Work Protocol & Procedures

## Employers should:

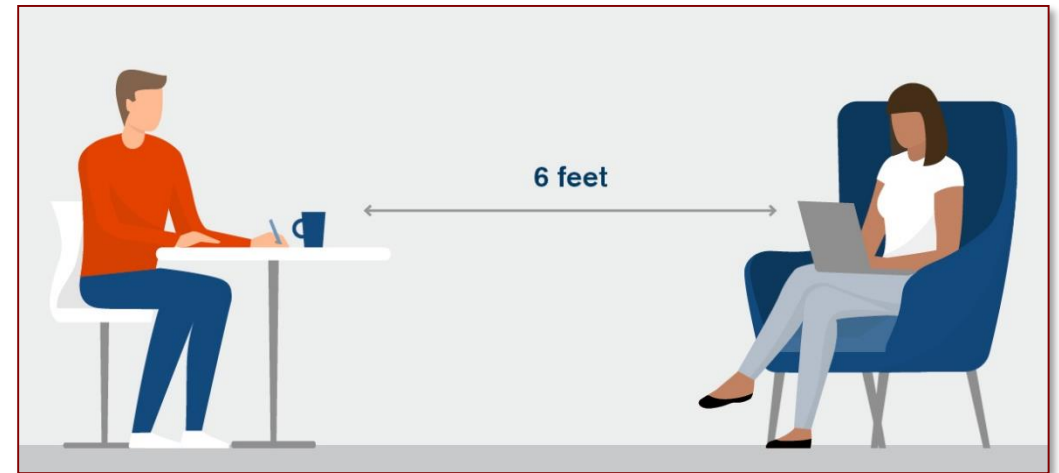
- ✓ Implement and enforce infection control practices and procedures
- ✓ Inform employees of the safety or prevention measures they have taken
- ✓ Provide employees with the protocols that employees are expected to follow
- ✓ Provide employees RTW training

# 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

# 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



# 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

# 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

# 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

# Taking Temperatures

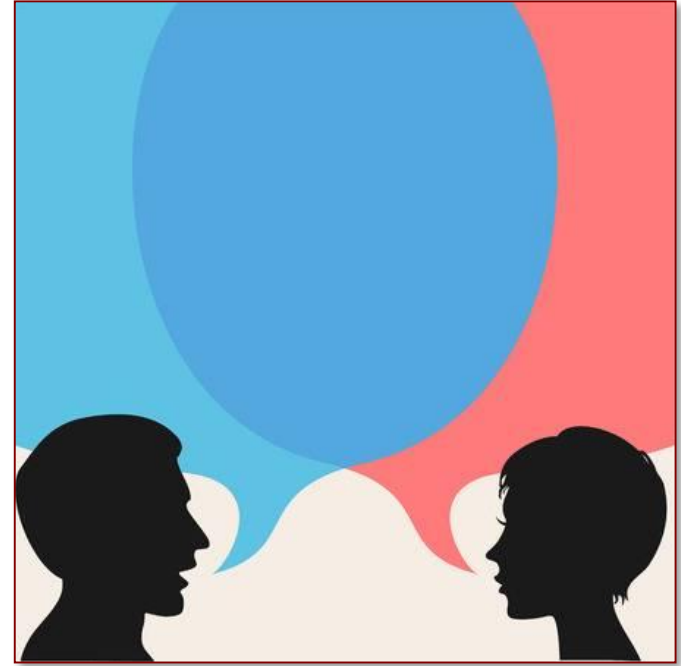
- Employers can measure employees' body temperature
- Temperature check options
- Notify employees of temperature screening in advance
- If testing is done onsite, how to maintain social distancing for employees waiting to be tested
- Send home any employee with an elevated temperature



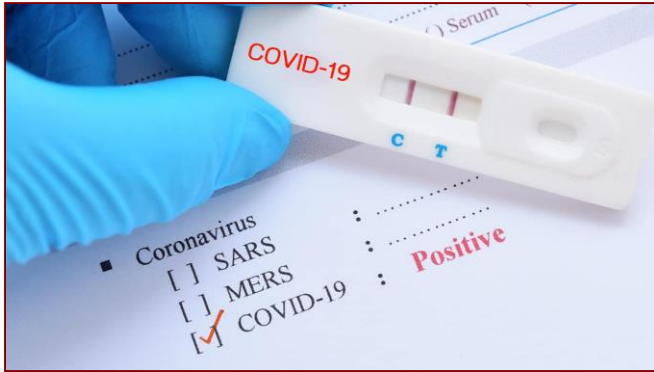


# Communication is Key!

- 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



# 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

# Questions?



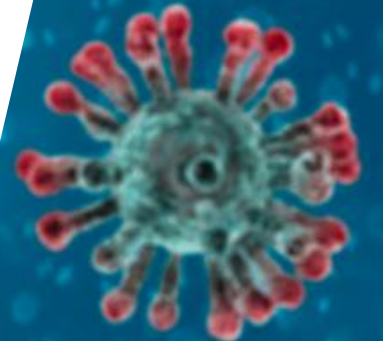
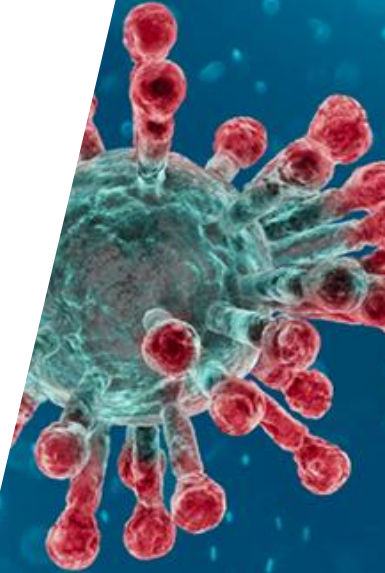
## **Conor H. Meeks**

Associate, Taft Cincinnati

Employment & Labor Relations

[cmEEKS@taftlaw.com](mailto:cmEEKS@taftlaw.com) / (513) 827-3883

**Taft/**



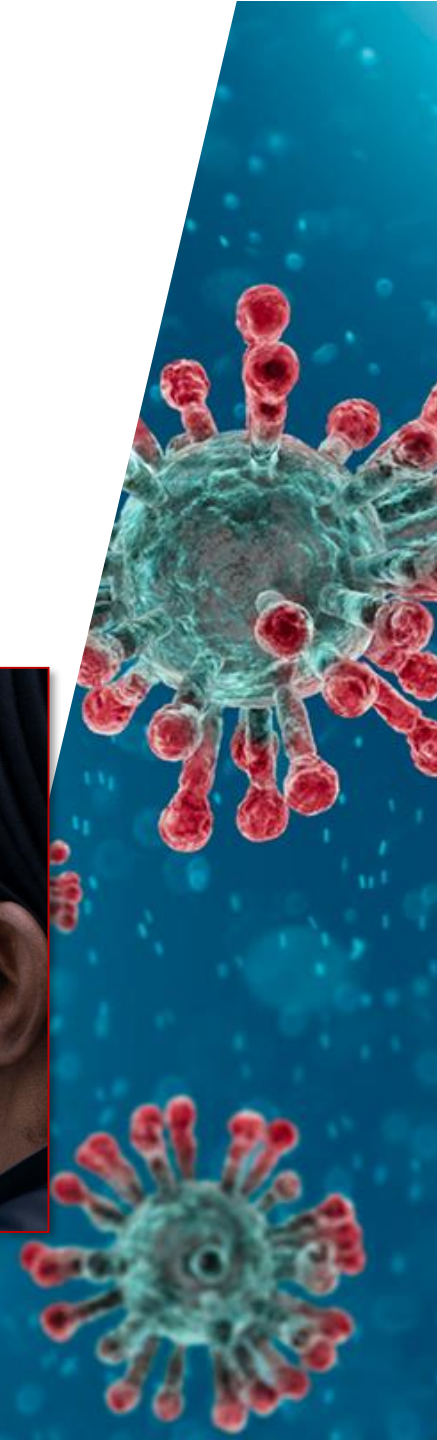
# COVID-19 Issues in Workers' Compensation

Presented by:  
Jennifer Hann Harrison

Taft/

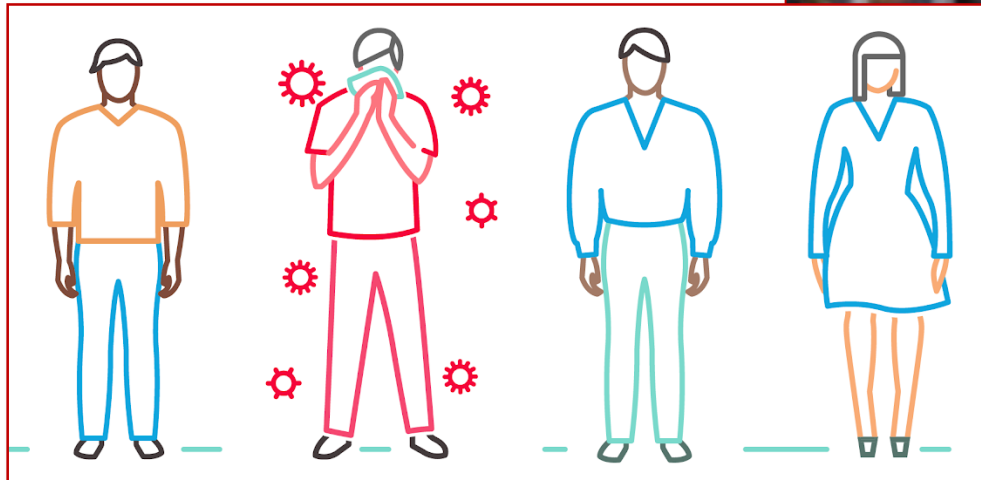
# Elements of a Workers' Compensation Claim

- Diagnosis
- Statement from medical provider
- Arising out of
- In course of
- Rebuttable presumption?



# Investigating & Defending Workers' Compensation Claims of COVID-19

- Special hazard?
- Contact tracing
- PPE policy/procedures



# Working from Home During COVID-19

- Arising out of
- In the course of



# Questions?



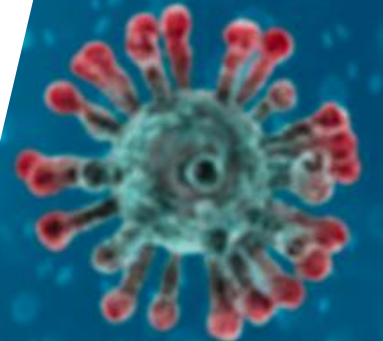
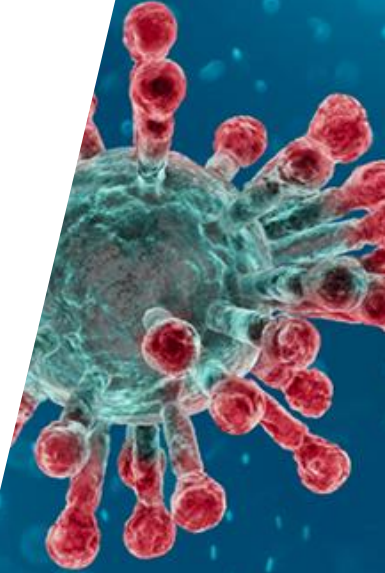
## **Jennifer Hann Harrison**

Partner-in-Charge, Taft Dayton

Workers' Compensation Partner

[jharrison@taftlaw.com](mailto:jharrison@taftlaw.com) / (937) 641-1756

**Taft/**





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