

March 16, 2020

Re: Covid 19 and Worker Safety

Dear Valued Client,

It is apparent that over the past few weeks' businesses of all sizes and disciplines continue to face challenges and uncertainties as we forge headlong into the Covid 19 pandemic. As recommendations from varied sources and agencies are issued, such advice can easily overshadow the importance of worker safety and our obligations as employers. What's more, there are regulatory requirements established by Cal OSHA all employers must follow.

First: Cal OSHA established the Aerosol Transmissible Disease regulation over ten years ago. Title 8, California Code of Regulations (section 5199). While this regulation is focused more towards Health Care, Corrections, Public Safety and similar entities, there is a provision in the standard as follows: *"Cal/OSHA is authorized to issue an Order to Take Special Action to an employer not generally covered by section 5199 (or parts of section 5199) to require the employer to comply with all parts of section 5199 when necessary to protect employees.*

As an example, a local health department (LHD) may determine during the investigation of an Aerosol Transmissible Disease case that transmission may have occurred or may be occurring in an establishment not listed in the regulation. In that circumstance, after conducting an investigation, Cal/OSHA would "require the employer, which is not generally within the scope of the ATD standard, to provide medical assessments and medical follow-up to employees as recommended by the LHD. As such, health departments and medical providers can notice and refer to the division cluster data relative to employee exposure and contraction in or from a specific business.

CSG recommends businesses continue to follow the recommendations of the CDC and other agencies, establish and maintain hygiene and sanitation requirements for all workers. Additionally, continue to seek out professional counsel and guidance as necessary to protect workers and support sound business practices.

Second: Businesses that direct employees to work from home should be aware that many Cal OSHA regulations, as well as Worker Compensation laws, apply to these individuals as well.

CSG recommends that in these circumstances, employers clearly define the work practices and activities these employees are to be engaged in. Remember, there are wage and hour considerations as well.

Employers should seek advice and counsel from legal, insurance, safety, and human resources professionals to assist in such decisions and employee assignments.

Finally: The issuance of filtering facepiece respirators, commonly referenced as N95 dust mask (even voluntarily,) requires employer adherence to specific Cal OSHA regulations. Most likely, employers will be asked by employees to be issued these respirators if available, although the N95 is not required, due to a recognized and quantifiable workplace hazard. Or, the employee arrives in the workplace wearing the device. Where respirator use is voluntary, the employer may provide respirators at the workers' request, or permit workers to use personal respirators.

In this situation, employers **are not required to have a written respiratory protection program or medically evaluate and fit test workers. However, the employer must ensure that the workers' use of a respirator will not create a hazard. The employer must also provide respirator users with the information contained in the California Code of Regulations, Title 8, section 5144, Appendix D, and must follow all other requirements in section 5144, subsection (c)(2).**

CSG recommends that employers make efforts to notice employees coming into the workplace wearing such respirators, or when an employee asks for this device, take the following steps:

1. Inform the employee of the proper fit method for the effectiveness of the N95 and the hazards associated with wearing one. (i.e., it is a negative pressure type respirator which filters out and collects particulate can impair breathing over some time and should be changed frequently.
2. Issue the attached Appendix D and record the name of the employee and date when Appendix D was issued.

While the efficacy of the N95 as it relates to preventing the spread of Covid 19 is questionable, in most work environments, the decision to permit employees to wear them is within the business's discretion. Remember that employees with asthma and respiratory illnesses, and some cardiovascular conditions can be a factor for those who have never worn them.



CSG fully understands the challenges being faced by all of us during this time, and we remain committed to our belief that THE SAFETY OF YOUR BUSINESS IS OUR BUSINESS. To this end, CSG is providing phone/email/ text consultation and support services at no charge to any business entity seeking assistance in addressing this matter.

**CSG CONTACT INFORMATION**

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Regards,

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