

# STAYING SAFE DURING COVID-19: WORKER RIGHTS AND STRATEGIES

## 1. WHAT ARE MY EMPLOYER'S RESPONSIBILITIES?

Your employer has the legal responsibility to provide a safe and healthy workplace under OSHA and a contract if you have a union. This requires the employer to protect all workers from all known hazards, including infectious disease such as COVID-19. Employers are required to evaluate all worker exposures to determine the level of risk to COVID-19. Employers should have a written plan to describe how workers will be protected from the virus. This plan should include the following:

- Prioritizing most effective control measures
- Providing paid training and necessary, effective PPE at no cost to workers.

Federal OSHA and many State Plan OSAs have failed to take adequate actions during the pandemic. We do not have to wait, however, for public agencies to respond. You and your co-workers have the right to develop a strategy and make sure you are protected from COVID-19.

The first step is to become knowledgeable about the [best protective measures for your type of workplace](#). Once you know the proper protections:

- Review your employer's plan
- Demand changes where necessary, and
- Insist that workers have an active role in making sure the plan is carried out correctly.

## 2. HOW CAN I BE SURE MY WORKPLACE IS SAFE DURING COVID?

Questions to determine if the workplace is safe include:

- Is there a comprehensive written plan to evaluate, eliminate or reduce worker exposure to infectious disease hazards that is available to workers for review?
- Are workers involved in the development and implementation of a COVID-19 protection plan?
- Has the employer evaluated all the jobs to determine the risk level for exposure to COVID-19?
- Has the employer trained and provided necessary information to workers related to the hazards and prevention methods for COVID-19?
- Has the employer implemented adequate protective measures, such as physical distancing, barriers, and personal protective equipment (PPE) for all workers?
- Is there a process to improve the protective measures currently in place?

- Is there a health and safety committee with at least equal worker representation (chosen by workers, not management) that can follow-up on worker complaints/suggestions?
- Are workers entitled to benefits that are adequate to increase the likelihood that they will stay at home if they have symptoms? These may include but are not limited to paid sick time; employer-paid testing and treatment, elimination of attendance incentive programs.)

Note: If you answered No to any of these questions, you should discuss these issues with your co-workers and come up with a plan to document problems and convey them to management. These deficiencies should also be used to talk with co-workers about improvements needed in your workplace.

### 3. WHAT ARE ADDITIONAL STEPS TO EVALUATE THE COVID PROTECTION PLAN IN MY WORKPLACE?

- The best way to ensure your workplace is safe is organizing with your co-workers. Keeping safe from COVID is a team effort!
- You can get infected with COVID-19 through your nose, mouth, and eyes by either breathing in virus particles that were in the air where infected people have breathed or coughed/sneezed OR by bringing the particles to your face with your hands (after touching infected surfaces).
- What does a safe workplace look like? The details depend on the exact type of workplace you are in, but here are some general guidelines:
  - a. **Fewer people.** The fewer co-workers or customers in a space the better.
  - b. **Better air circulation.** Working in open spaces or spaces with adequate ventilation systems helps dilute or filter virus particles.
  - c. **More distance.** The more distance between people the better (at least 2 meters or 6 feet).
  - d. **Physical barriers** to isolate people from each other where possible
  - e. **Hand washing.** Employers should provide hand washing stations (with water and soap) and regular breaks so employees can wash their hands.
  - f. **Clean surfaces.** Every day, employers should clean and disinfect workstations, shared tools, and shared spaces such as the break room and bathroom.
  - g. **Proper personal protective equipment (PPE).** When there is danger of close contact with another person, everyone should be wearing a respirator. N95 or N100 respirators protect you if others around you are infected. For respirators to be effective, they need to fit you properly, and you should receive training in how to use them. Cloth or surgical masks

help you protect other people in case you are infected. There are other important protections for workers who are close to the public, such as plastic barriers, face shields, and goggles.

#### 4. WHAT CAN WE DO TO ORGANIZE OURSELVES TO DEMAND IMPROVED PROTECTION?

- **Learn about COVID-19 together:** It's much easier to take action when we have a shared understanding of the problem. What is COVID-19? How can someone get infected? What are prevention measures being used?
- **Brainstorm about your workplace risks:** Where are the risks in the different spaces? (For example, the entrance, the front of the house, the back of the house, the breakroom, and the administrative offices).
- **Document what has happened so far:** Unjust employers will likely want to say "The workers caught COVID-19 elsewhere," so monitoring collectively is important. Have workers gotten sick? How many? When? Maintain a record of everything that has happened with the date when possible.
- **Form a committee** to develop a plan and schedule regular meetings.
- **Gather contact information from all workers you can:** Think about folks outside of your department too!
- **Choose a communication platform:** Create groups in Signal, Slack, WhatsApp, or Facebook. Make sure to make it private so workers can strategize without management interference.
- **Brainstorm about rank/vulnerability within your team:** Who in management has power to make decisions? Who influences them? What leverage do workers have to challenge the boss? What does management need from workers? How do workers line up for or against supporting challenges to management?
- **Decide together what are the most important measures** to take! (see #6)
- **Demand your employer implement those measures** and motivate them by putting escalating pressure on them. That means, tactics that slowly help you recruit more and more support from your co-workers and allies AND that slowly put more pressure on the employer to do the right thing. Some ideas of escalating tactics:
  - a. Take a safety and health training
  - b. Watch a documentary together (but from home) on Netflix
  - c. Send or drop off a letter with demands
  - d. Post a poster with the demands
  - e. Sing protest songs from your workstation
  - f. Create a #hashtag to post testimonials on social networks
  - g. Call or text the boss frequently with the same message at the same time
  - h. Protests from the car (the horn or music at the same time)
  - i. Protests from afar (one person per parking spot)

- j. Stop working for a few minutes
- i. Work slowdowns / other job actions

## 5. WHAT CAN I DO IF I DON'T THINK IT'S SAFE TO GO INTO WORK?

- Workers have a legal right to a safe and healthy workplace. It's a legal right under OSHA as well as a basic human right.
- OSHA rights are minimal protections enforced by a weak, small agency. We compare the OSHA law to a minimum wage – it's a worker's right but it's not a living wage.
- You can also file a complaint with Federal OSHA or your state's OSHA, but you should know that OSHA programs are not doing regular inspections during COVID, with rare exceptions. Thousands of workers have filed complaints only to have OSHA instruct the employer to investigate and report back to them. There are some strategies to help when considering [filing a complaint with OSHA](#) or State Plan OSHA
- OSHA can be useful to investigate and issue citations in specific situations where workers have documented serious violations of standards and can file a complaint with OSHA that describes those hazards.

## 6. HOW DO WE PRIORITIZE DEMANDS TO PREVENT OUTBREAKS?

Prevention measures can assure that workers DO NOT get sick in the first place. These should be part of all other demands, such as hazard pay and other benefits.

Workers should be included in the process of identifying workplace hazards and decisions on what are most effective controls and training.

Here are different examples of approaches to controlling hazards, starting with the most effective and going down the list to the least effective:

### ***Eliminate the hazard:***

- Everyone works from home.
- Paid sick leave for workers with symptoms or who have been in contact with people with active COVID-19 infections.

### ***Engineering Controls:***

- Maintenance and improvement of HVAC systems to improve air circulation and increase flow of fresh air
- Working outdoors when possible instead of indoors.
- When indoors, working with doors and windows open. Barriers, such as plexiglass, to separate workers from one another and from public and outside visitors.

**Administrative Controls:**

- Preventive and emergency plans, including contact tracing
- Communications channels: how do workers get daily updates
- Shorter and staggered shifts to reduce crowds and contact
- Regular hand washing breaks
- Limit the number of workers, public and outside visitors in the workspace
- Daily sanitation, with disinfectant, of workspace, tools, and bathrooms,
- Hand washing stations, with all necessary supplies, at all work locations and accessible to all workers.

**Personal Protective Equipment:**

- Respirators (N95 and N100 or higher protection)
- Goggles
- Gloves
- Gowns
- Require masks for all workers, public and outside visitors

**Benefits:**

- Supplemental pay
- Employer-paid testing and treatment

**7. WHAT BENEFITS MIGHT I BE ENTITLED TO DURING THE COVID-19 PANDEMIC?**

If you contract COVID from your work environment or you are unable to work due to COVID, you may be eligible for benefits related to these situations.

- Work-related cases of COVID can be covered under workers' compensation benefits in most states. Some states have passed legislation, regulations, and/or executive orders to provide "presumptive" coverage under workers' compensation. Front line health care workers are often (but not always) being included along with public safety workers.
- A "presumption" shifts the burden of proof from the worker having to prove the virus came from workplace exposure to the employer having to prove that it did not. Presumptions can be indisputable or rebuttable.
- If you lose work related to COVID situations in your workplace, you may be eligible for unemployment benefits from both state and federal programs.
- There may be other local, state or federal programs that offer assistance to workers adversely affected by the COVID-19 pandemic. Many groups of the most vulnerable workers -- including immigrants, undocumented workers, contingent and gig workers

and others -- have been excluded from benefits. This is a dangerous situation for these workers, their families and the community.

## **8. WHAT ARE RETURN TO WORK LIABILITY-WAIVERS AND HOW CAN WORKERS RESPOND?**

- Many workers are reporting their employer is asking them to sign a waiver that protects the employer from any liability related to COVID-19.
- This is a way for employers to intimidate workers and try to have them think they have less rights than guaranteed under law.
- Generally, it is recommended that workers do not sign these documents, but workers cannot sign away legal rights they may be entitled to.
- As is the case in most job-related actions, it's best to have a group of workers to protest this demand from the employer.
- In workplaces where workers have union representation, labor organizations can and should challenge this practice.

## **9. WHAT IS CONTACT TRACING? HOW DO WE DO IT?**

Contact tracing is used by health departments and public health organizations to prevent the spread of infectious disease. This involves identifying people who have an infectious disease (cases) and people who they came in contact with (contacts) and working with them to interrupt disease spread.

This information is extremely important for any outbreak of COVID cases in a workplace. If and when an outbreak occurs, employers – with input from workers – should re-evaluate protections in place and improve controls to prevent other workers from getting infected.

Contact tracing for COVID-19 typically involves:

- Interviewing people with COVID-19 to identify everyone they had close contact with during the time they may have been infectious.
- Notifying contacts and co-workers of their potential exposure.
- Referring contacts for testing and guaranteeing confidentiality.
- Monitoring contacts for [signs and symptoms of COVID-19](#).
- Connecting contacts with services they might need during the self-quarantine period and improving workplace conditions to prevent additional infections.

## **10. HOW WOULD A WORKPLACE HEALTH AND SAFETY COMMITTEE WORK IN THE WORKPLACE RELATE TO THE COVID PROTECTION PLAN?**

- Health and safety committees should be the cornerstone of every workplace health and safety program.

- Committees need to have significant participation from workers and worker representatives. Worker representatives should be selected by workers themselves, not tapped by management.
- Some states have required health and safety committees and most union contracts have health and safety committees specified. Many employers have committees set up with worker volunteers.
- Health and safety committees should monitor the workplace COVID-19 Protection Plan.
- Any reports from workers that indicate lapses in the plan's implementation should be investigated by the committee and recommendations should be implemented.
- Visit [nationalcosh.org](https://www.nationalcosh.org) for more information on forming and using health and safety committees.

#### **11. WHAT ARE DEMANDS TO PROTECT WORKERS AFTER ILLNESS HAPPENS? HOW DO WORKERS RESPOND TO A COVID OUTBREAK IN THE WORKPLACE?**

- The identification of new COVID cases in the workplace should be taken very seriously by the employer and workers. In all circumstances, the identity of the affected individual should be kept confidential.
- Often, many employers have withheld information about positive cases. This makes the situation worse by preventing effective contact tracing and making it hard to take remedial action to prevent future cases.
- Unfortunately there are few specific requirements currently mandating all cases be reported to any agency. There may be some jurisdictions that require COVID-19 cases to be reported to the local health department.
- If the employer acknowledges that the worker got infected by workplace exposures, then the employer must report it on their OSHA 300 log, which is accessible to employees. Many employers are not doing this and instead blaming positive cases on 'community spread.'
- Positive cases should trigger an investigation to determine the reason for the infection. This information can be used to increase protections and prevent other exposures. The Workplace COVID-19 Prevention Plan should then be revised to increase the level of protections for all workers and the public.

#### **12. WHAT POINTS CAN I EMPHASIZE WHEN TALKING TO MY CO-WORKERS ABOUT COVID-19 PROTECTIONS – OR THE *LACK* OF PROTECTIONS?**

- The COVID pandemic has exposed many of the disparities in our society, including how vulnerable workers are to be working in dangerous and life threatening conditions. There's many lessons to learn from the pandemic including:

- a. Workers are being required to perform jobs necessary for community survival without being provided with adequate protections for themselves and family members.
- b. Employers are responsible to protect workers from the virus, but workers need to stand up for our own health and safety rights to get the necessary protections for survival.
- c. When we stick together, workers can win significant demands and improvements in pay and working conditions.
- d. Knowledge can be powerful. The more that we know about the latest information about the virus, the better we can protect ourselves and our co-workers.
- e. Communication networks and strategies are key to mobilizing workers to fight for improvements.
- f. The public is very supportive right now of workers who are taking daily risks to support others in our community. This can help us win important protections when we come up with a plan to stand up for our rights.

### **13. WHEN SHOULD WORKERS CONTACT OSHA RELATED TO THE LACK OF PROTECTIONS FROM COVID EXPOSURES?**

- OSHA has instituted a non-enforcement policy during the COVID pandemic. This means they are not investigating worker complaints other than sending a letter or calling the employer responsible for the complaint. There are some exceptions to this policy but very few. OSHA does not have any specific standards related to infectious disease protections nor are they trying to institute any new standards.
- Relying on OSHA to make the workplace safe is always a gamble. Often, an effective strategy is to negotiate with the employer while having the threat of calling in OSHA. OSHA should but does not have the resources to inspect and assure safety for the millions of workplaces it covers. The safety standards it enforces are minimum protection levels. When violations cannot get fixed by applying internal pressure, it's critical to document hazards and demand that OSHA respond to any complaints.

### **14. DO I HAVE THE RIGHT TO REFUSE DANGEROUS WORK RELATED TO COVID-19?**

- Workers have a right to refuse dangerous work under the OSHA Act. But this can be a hard case to prove so requires careful adherence to the process of refusal. Also, any complaints related to retaliation from the employer have to be filed within 30 days of the reprisal.
- Your right to refuse to do a task is protected if all of the following conditions are met:
  - Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and

- You refused to work in “good faith.” This means that you must genuinely believe that an imminent danger exists; and
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn’t enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.
- Collective action is also bolstered further by workers’ right to “concerted activities for... mutual aid or protection” under the [National Labor Relations Act](#), which governs most private sector employment. The Labor Board [agrees that](#) “participating in a concerted refusal to work in unsafe conditions” is protected.

## **15. WHAT ARE SOME ADDITIONAL TALKING POINTS ABOUT THE VIRUS FOR CO-WORKERS?**

- COVID-19 is a highly infectious disease that ranges from no symptoms to deadly ones. Although an individual's health history is an important factor, we don’t exactly know who will get severely sick.
- All of us have a responsibility to protect one another. Our employer has a legal obligation to keep us safe, but because employers often prioritize profits or so-called “productivity” over safety, workers must act together to make sure our jobs are as safe as possible.
- COVID-19 is transmitted through breathing infected particles (through your nose or mouth) OR bringing infected particles to your eyes, mouth, or nose. You can get others sick even if you don’t have symptoms. In the months since the COVID-19 pandemic began, [we have learned a great deal about how it is transmitted and how it can be controlled](#). With support from COSH groups, worker centers, and unions, we can and must work together to reduce risks and stop the spread of this deadly virus. .