State Guidance and Potential New Rules to Protect Ag Workers from COVID-19

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• Overview of OSHA and CDC Guidance for critical infrastructure and agriculture workers
• State Responses to COVID-19
  • Executive Orders
  • Rulemaking Initiatives
  • Guidance
• Issue Trends and Considerations
• Q&A
CDC Guidance for Critical Infrastructure Workers

• **Key Focus**
  - Keep critical infrastructure workers working, even following a potential exposure to COVID-19
  - Use of strict precautions to protect against spread of COVID-19

• **Recommended Precautions**
  - Pre-Screen
  - Regular Monitoring
  - Mask Use
  - Social Distancing
  - Cleaning and Disinfection
CDC Guidance for Critical Infrastructure Workers

- Employer response and precautions should consider the level of disease transmission
- Coordinate with state and local health officials
- Have a COVID-19 Response Plan
  - Separation of sick employees
  - Respond to known or presumed COVID-19 infection
  - Enhanced cleaning and disinfection measures
  - Communication plan (reporting to authorities, responding to media inquiries, etc.)
OSHA Guidance on COVID-19

General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (“OSH”) Act of 1970

Application of current standards and regulations
  • Personal Protective Equipment
  • Hazard Communication Standard
  • Bloodborne Pathogens Standard
  • Sanitation

“Guidance on Preparing Workplaces for COVID-19”

Interim Enforcement Guidance, and Enforcement Policy Memorandums
Additional OSHA Considerations

• Records collected for health screening and temperature check purposes
• Whistleblower protection under Section 11(c) of the OSH Act
• Compliance Challenges
  • Fit-Testing
  • Medical Surveillance
  • COVID-19 Complaints
  • PPE and cleaning supply shortages
State Responses to COVID-19
State Responses to COVID-19

- Executive Orders
- New and Proposed Legislation
- Rulemaking Actions
State Responses to COVID-19

- More than 150 bills proposing COVID-19 related legislation
- Over 1,130 executive actions have been issued
- Numerous emergency regulations
- Issues
  - Essential vs. non-essential businesses
  - Business restrictions
  - Safety Considerations
State Responses to COVID-19

• Executive Orders
  • Mandated use of Cloth Face Coverings
    • CDC Recommendation
    • State order with focused recommendation or mandate
  • Social Distancing Measures
  • Explicit Considerations for Critical Infrastructure and Agriculture
    • E.g., Nevada
Washington State Department of Labor and Industries

• Issued Emergency Rules on May 13th
  • Effective May 18th
  • Required steps to increase physical distancing, improve cleaning and sanitizing, and reduce the chance of a large outbreak or spreading of coronavirus related to temporary worker housing at farms.

• Requirements
  • Provide occupants of temporary housing with cloth face coverings
  • Ensure physical distancing at housing sites (e.g., beds and bunk beds)
  • Frequently clean and disinfect surfaces
  • Isolate workers with suspected or confirmed cases of COVID-19
Rulemaking Initiatives

• **May 28** must submit revised temporary worker housing management plans to the state Department of Health that demonstrate how they will comply with the emergency rules requirements.

• Variance permitted, but employers must have a proposal for an “equally effective way” to protect people living in temporary worker housing.
Oregon OSHA

- Temporary Administrative Rule Applicable to Labor Housing and Agricultural Employment
  - Effective May 11th
  - Part of the rule applies to “all labor-intensive agricultural operations when employees would otherwise perform their duties or routinely congregate within 6 feet of one another.”
    - labor-intensive agriculture refers to the need for a large number of workers, not simply the act of working hard
  - Part of the rule applies to temporary worker housing or other employer-provided housing
  - Remaining part of the rule applies to employer provided transportation within “labor intensive agricultural operations”
Oregon OSHA

• General requirements
  • Social Distancing Officer
  • Social Distancing
    • Planned Work Activities
  • Potable Drinking Water
  • Toilet and handwashing facilities
    • 1 toilet facility and 1 handwashing facility for each 20 employees
    • Effective June 1, 1 toilet facility and 1 handwashing facility for each 10 employees
  • Market considerations, but must demonstrate unavailability
Oregon OSHA

- Field Sanitation Notice
- Reasonable Use considerations for potable water and facilities
- Cleaning and sanitation measures
- Agricultural Labor Housing registration
- Disease prevention measures for transportation
  - Vehicle operator and passengers must be separated by 3 ft.
  - Use of cloth face masks
  - Sanitation of high-contact surfaces before each trip or twice a day
- On May 8th, the agency issued an enforcement memorandum, delaying enforcement on the rule until June 1st
- Agency acknowledges infeasibility issues in guidance and FAQs
California Department of Industrial Relations Division of Occupational Safety and Health ("Cal OSHA")

- COVID-19 Infection Prevention for Agricultural Employers and Employees
  - Employee Training
  - Procedures to Help Prevent the Spread of COVID-19
    - Separate Sick Workers
    - “Make hand washing stations more readily available and encourage their use”
    - Routinely clean and disinfect commonly touched surfaces
  - Procedures to Increase Physical Distancing
    - Physical distancing in vehicles and structures
    - Establish new working procedures to allow for physical distancing while working
    - Limit crew size
    - Additional seating and shade structures
  - Good Sanitation Practices
Washington State Department of Labor and Industries

• Requirements
  • Maintain social distancing or effective physical barriers
  • Ensure adequate hand washing facilities and frequent employee hand washing
  • Increase regular cleaning and sanitizing of common-touch surfaces
  • Make sure sick employees stay home or go home, and to have procedures in place for workers to report a suspected or confirmed coronavirus case; and
  • Educate workers about coronavirus and how to prevent transmission

• Recommendations
  • Stagger work shifts and tasks
  • Outdoor meetings
State Agricultural Agencies

- Minnesota Department of Agriculture
- Connecticut Department of Agriculture
- Nevada Department of Agriculture
Issues, Trends, and Considerations

- Nonprofits focused on farmworkers are pushing for increased safety measures
  - E.g., Farmworker Justice and Oregon Law Center
- Workers Compensation Claims for COVID-19 Cases
  - Presumptive coverage for “essential” workers
    - E.g., California
- Reporting and Recording of COVID-19 Cases
- OSHA Complaints
- Targeted Regulatory Inspections
Questions and Answers
Thank you.