

JacksonLewis

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

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May 21, 2020

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Agenda

- 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

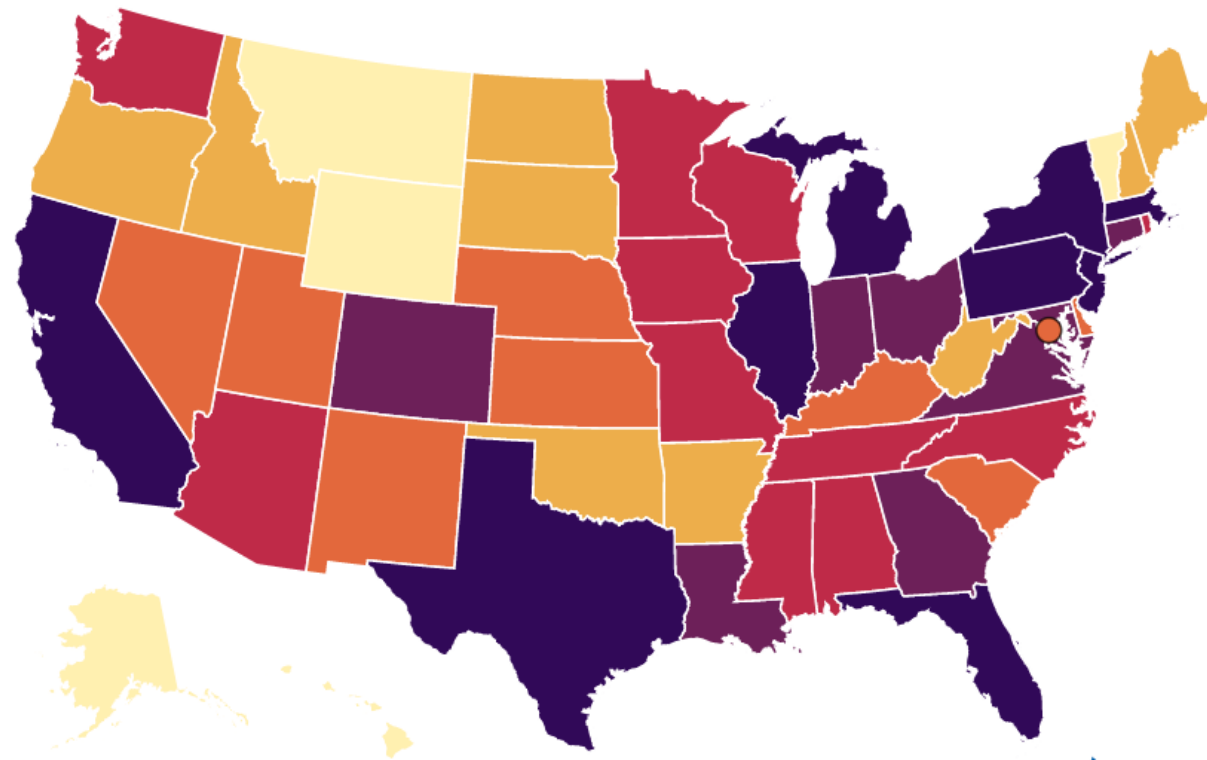


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Additional OSHA Considerations

- 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



Reported Cases

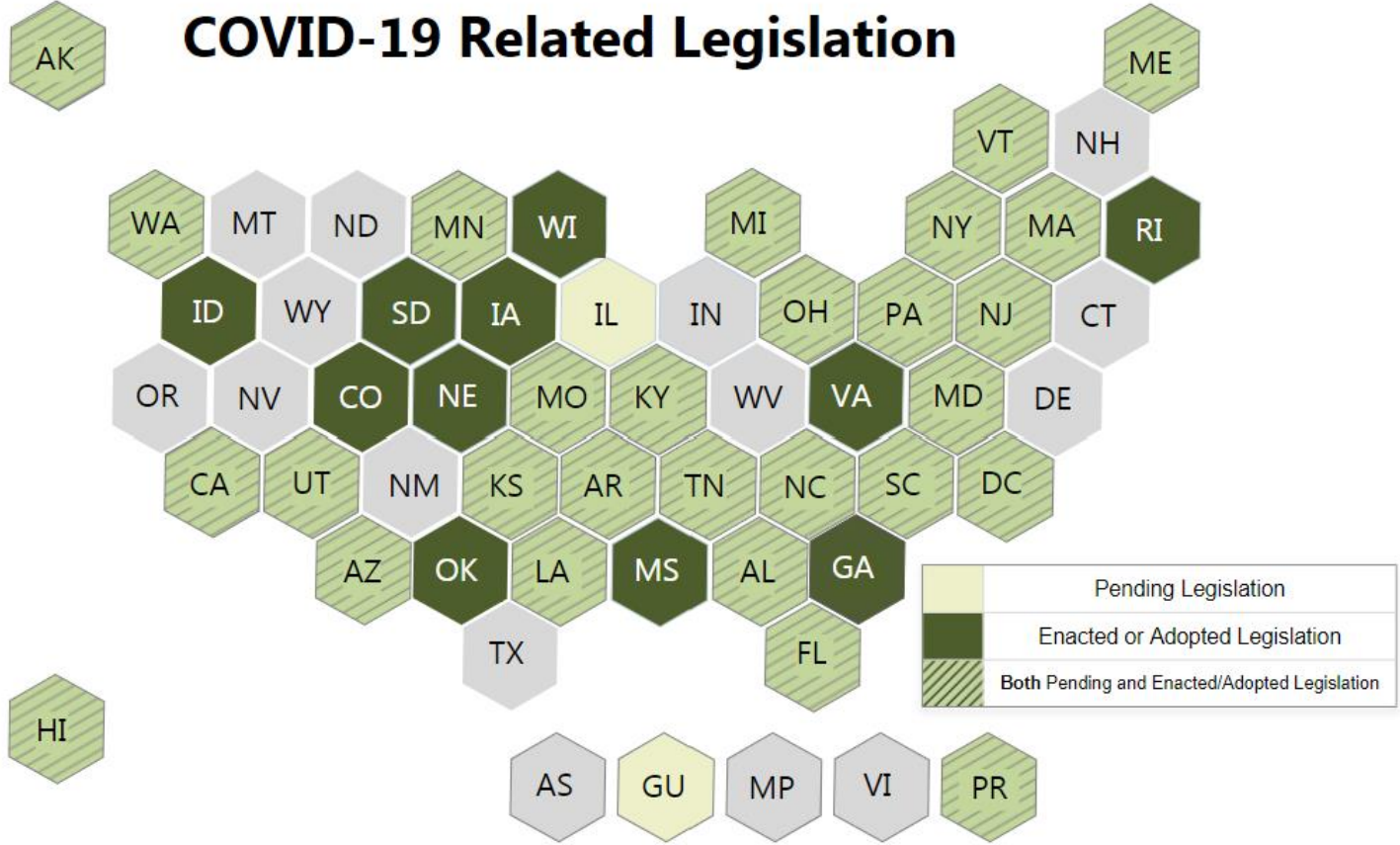


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State Responses to COVID-19

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

Rulemaking Initiatives

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 28th** 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

Rulemaking Initiatives

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”

Rulemaking Initiatives

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

Rulemaking Initiatives

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

Regulatory Guidance

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

Regulatory Guidance

State Agricultural Agencies

- Minnesota Department of Agriculture
- Connecticut Department of Agriculture
- Nevada Department of Agriculture

**Regulatory
Guidance**

Issues, Trends, and Considerations

- Nonprofits focused on farmworkers are pushing for increased safety measures
 - E.g., Farmworker Justice and Oregon Law Cent
- 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



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Questions and Answers

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Thank **you.**