



UNITING THE TRADES OF:



CONSTRUCTION EMPLOYERS' ASSOCIATION



March 23, 2020

Doug Parker, Chief
Cal/OSHA / Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Dear Chief Parker,

On behalf of the following organizations, who represent the majority of California's construction industry employers who employ tens of thousands of workers, we write seeking **urgent** clarification of regulatory policies related to the COVID-19 health crisis. Specifically, we are seeking clarification from Cal/OSHA on where and when virus related illnesses become recordable or reportable events for construction employers.

We have attached a list of key questions and concerns facing our industry during this unprecedented time and encourage Cal/OSHA to utilize the Federal OSHA guidance on the recording of a confirmed case of COVID-19.

Federal OSHA has specifically provided on the recording of a confirmed COVID-19 case:

"COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);

The case is work-related, as defined by 29 CFR 1904.5; and

The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work)."

As all construction has been included in the Governor's Executive Order N-33-20 as essential services, and our industry will be operating during this crisis, we are looking for clarity from the Division on how Cal-OSHA will view days missed by employees due to illness related to COVID-19. Our concern is, it may be impossible to determine when and where the virus was contracted.

Again, we implore Cal/OSHA to adhere to the federal guidance set forth, in order to provide reasonable and uniform guidelines for our industry during this unprecedented time. Respectfully, we are asking for your response on an immediate basis.

This guidance is critically important for many contractors to determine if they should proceed with work or not. We stand ready to assist with technical or practical assistance in order to expedite an agency response.

Sincerely,

Mark Breslin
CEO, United Contractors

Peter Tateishi
CEO, AGC of California

Frank Nunes
CEO, WACA

Timothy Murphy
CEO, SRBX

Eddie Bernacchi
Director of Public Affairs, NECA

Deveny Pula
CEO, SCGMA

Albert Carrillo
CEO, WWCCA

Jeannie Simpelo
CEO, NCAT

Denise K. Cooper
President, SCCA

Chris Walker
EVP, SMACNA

Mike Walton
Secretary, CEA

 UNITED CONTRACTORS SCGMA SRBX
SACRAMENTO REGIONAL BUILDERS EXCHANGE AGC
CALIFORNIA WACA
WALL AND CEILING ALLIANCE

NCAT

UNITING THE TRADES OF:

NCPFC NCGMA
CAL
SMACNACONSTRUCTION
EMPLOYERS'
ASSOCIATIONSCCA
SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION

Attachment: Critical Questions & Concerns Faced by Industry

Our members face a logistical nightmare in determining where someone contracted the virus, whether it be on the job or at home – just as with a non-recordable occurrence of a worker contracting a common cold or influenza, the opportunities for exposure are countless.

In the Cal/OSHA document “An Overview: Recording Work-Related Injuries and Illnesses: Classifying Illnesses, Respiratory condition”, it states “Respiratory conditions are illnesses associated with breathing hazardous biological agents, chemicals, dusts, gases, vapors or fumes at work.”

As a result of the pandemics unprecedented impact, we have the following questions and stated concerns and, for these reasons, urge Cal OSHA to use the Federal OSHA guidelines to provide reasonable and uniform guidelines.

1. Does Cal/OSHA consider Coronavirus (COVID-19) a biological agent? Common definitions suggest such agents are “...used purposefully as a weapon or bioweapon”. Coronavirus does not appear to fit in the category identifying respiratory conditions.
2. Under the same section noted above is a section “All other illnesses”, the examples mentioned do not include influenza or influenza-type viruses.
3. Please clarify under what circumstances Cal/OSHA would consider COVID-19 as a recordable case.
4. If a worker is directed to self-isolate or is quarantined, would that be considered time away from work for recording purposes?
5. Posted to the Cal/OSHA website is a document “Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus” which states “Workplace safety and health regulations in California require employers to protect workers exposed to airborne infectious diseases such a coronavirus.” It goes on to state: “Cal/OSHA’s Aerosol Transmissible Diseases (ATD) standard (5199) requires protection for employees at **health care facilities, and other services and operations**. I note that although a variety of facilities are mentioned such as health care, laboratories; public health services; correctional facilities, police services; etc. there is no mention of construction-related workplaces. Does Cal/OSHA consider construction exempt from Title 8, Section 5199?
6. Under Title 8, Section 14300.7 “General Recording Criteria”, subpart (a), it states “You must also consider a case to meet the general recording criteria if it involves a significant injury or illness **diagnosed by a physician or other licensed health care professional.**”
7. We contend that although a worker might be diagnosed with COVID-19, it is virtually impossible for a physician or other licensed health care professional to definitively determine that the exposure was solely limited to the job site.