

COVID-19, OSHA, and the OSHA Whistleblower

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As a result of COVID-19 in Indiana, employees working in essential job functions are certainly asking more questions about safety in the workplace than ever before. These employees are finely tuned to the “social distancing requirements” and recommendations of the CDC designed to limit the spread of the virus. Obviously, as an employer, this means that management is required to be “finely tuned” to those requirements to ensure the health and safety of employees.

In this regard, under OSHA’s general duty clause employers are required to provide their employees with a place of employment that is free from recognized hazards that are causing or likely to cause death or serious physical harm. At this point, it is believed that OSHA will take the position that COVID-19 is “likely to cause death or serious physical harm.”

Thus, it is prudent of employers to engage management strategies to minimize the potential for the transmission of the virus between and among its employees. The attached link is the CDC’s updated website expressing best practices to minimize the spread of the virus. <https://www.cdc.gov/coronavirus/2019-ncov/index.html>. To the extent practicable, employers should take steps to comply with the CDC’s recommendations. Where strict compliance may not be possible due to certain constraints, the employer must take steps to reasonably mitigate the hazards.

It is also necessary to note that employees voicing concerns regarding workplace safety conditions have certain “whistleblower” protections under OSHA. An employee that voices a concern about hazardous conditions in the workplace is entitled to do so without fear of retaliation from his employer. In this regard, Anecdotal evidence suggests that with respect to COVID-19 concerns, the number of safety related complaints have risen dramatically. Careful management of those complaints, including where possible engaging in a dialogue to attempt to address the employee’s concerns is recommended. Most situations should resolve in that manner as long as everybody is working together to solve the issue.

Of course, there are difficult situations where the employee may refuse to work if the employee’s specific issue cannot be addressed to the employee’s satisfaction. In this regard, the employer that documents the discussion shows a reasonable effort to accommodate the request or issue and is in a much better place legally to defend against a whistleblower complaint.

In the time of COVID-19, with ever changing governmental recommendations, reasonableness appears to be the watch word of the day. Working reasonably, to address reasonable fears, will result in a reasonably safe working environment thus avoiding running afoul of OSHA. An employer that fails to take any precautions, or fails to address the reasonable complaints of employees, may find themselves on the wrong side of an OSHA complaint.

For updates on COVID-19 and its impact on the construction industry, please visit our [COVID-19 Resources](#) page. The attorneys at Drewry Simmons Vornehm, LLP are continuously working to

provide clients with timely, relevant analysis on those businesses and industries hardest by the pandemic are prepared to answer your questions. If we can help you navigate these extraordinary times, please contact us.

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