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BULLETIN

To: Membership of Allied Building Metal Industries, Inc.

From: Steven N. Davi

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Re: COVID-19 Update: OSHA, New York State Updated Guidance

Further to our recent posts and bulletins, please be advised the New York City Department of Buildings issued eighty-eight citations, including forty-one stop work orders, at construction sites throughout the city during its first five days of stepped-up COVID-19-related safety enforcement commencing July 8. In this regard, it has been reported that New York City residents lodged 6,127 complaints against contractors for potential COVID-19 jobsite safety protocol violations since March 30 through the city's nonemergency 311 phone system. Triggered in part by these citizen complaints, the Department has dispatched hundreds of inspectors to tens of thousands of jobsites throughout the city using Geographic Information System (GIS) technology that integrates compliance data with interactive mapping tools. [Construction Dive](#) has more detail where these developments are concerned.

Please consider this a reminder that the potential consequences are real for employers that fail to adhere to applicable COVID-19 health and safety workplace guidance.

OSHA

In this regard, and further to our advisory and bulletin dated July 6, the U.S. Department of Labor Occupational and Safety and Health Administration (OSHA) earlier this month published additional non-binding guidance in the form of additional [FAQs](#) regarding COVID-19 safety and wellness in the workplace.

Cloth Face Coverings

Echoing recent [guidance](#) by the U.S. Centers for Disease Control (CDC), OSHA recommends that employers encourage workers to wear face coverings while at work and ensure social distancing in the workplace even when workers wear cloth face coverings. OSHA offers this recommendation with the caveat that employers should exercise discretion with regard to face coverings where "specific circumstances" warrant, such as where PPE may be preferable to cloth face coverings in the event chemicals or similar hazardous materials are prevalent or highly present in the workplace.

Positive Tests

OSHA also advises workers to inform their employers if and when they have tested positive for COVID-19 so that employers can take prompt action pursuant to applicable CDC guidance, including carrying out [cleaning and disinfecting](#)¹ and eventual [return to work](#) protocols.

While OSHA does not *require* employers to notify other employees if one of their workers tests positive, OSHA does make clear in its FAQs that employers must take appropriate steps to protect other workers from exposure, which may include notifying other workers to monitor themselves for symptoms, as well as cleaning and disinfecting the work environment and implementing a workplace screening program. At the same time, OSHA does specifically reference in its FAQs the standing recommendation issued by the CDC to all employers: when informed a worker has tested positive, employers should determine which employees may have been exposed to the infected worker and inform employees of such possible exposure.²

Construction

The OSHA FAQs also contain guidance targeted to the construction industry. OSHA directs construction industry employers to its industry-specific [guidance](#), and reminds construction industry employers that OSHA's pre-existing respiratory protection requirements remain in effect and have not changed.

NYS Department of Health: Face Coverings

You should also be aware the New York State Department of Health (DOH) issued an [emergency rule](#) effective July 9 aimed at enforcement of COVID-19 social distancing measures. As a threshold matter, the emergency rule requires any person who is more than two years of age and able to medically tolerate a face-covering to cover their nose and mouth with a mask or face-covering when in a public place and unable to maintain, or when not maintaining, social distance. Where the workplace is specifically concerned, businesses must provide, at their own expense, face coverings for any employee who is in direct contact with customers or members of the public or is unable to maintain social distance at work. Moreover, business operators and building owners, and those authorized on their behalf, shall deny admittance to any person who fails to comply with the face covering mandate and shall require or compel such persons' removal. Violation of any of these provisions carry monetary fines and civil penalties. This emergency rule will remain effective for the duration of the COVID-19 state of emergency.

We will continue to monitor federal, state and local government websites and communicate any significant new guidance that you may want to consider integrating into your COVID-19 prevention strategies.

¹ In this regard, OSHA's FAQs remind employers of their responsibility to conduct a hazard assessment regarding exposure to hazardous chemicals used for cleaning and disinfecting. Depending on the results of such assessment, employers may need to provide PPE and implement a hazard communication program pursuant to OSHA's [Hazard Communication Standard](#).

² Employers should keep in mind they may not disclose confidential medical information under the Americans with Disabilities Act, and applicable federal, state and local laws.