



COVID-19 Update
To the Members of the Syracuse Builders Exchange
Earl R. Hall, Executive Director
May 20, 2020

Last Thursday, the Occupational Safety and Health Administration ("OSHA") Syracuse, New York regional Director, Jeff Prebish, and I hosted a live webinar regarding OSHA's role in the enforcement of COVID-19 related matters specific to construction sites. Jeff reviewed and discussed a wide range of topics, including OSHA's enforcement discretion and guidance. Included in his guidance presentation was recordkeeping requirements specific to COVID-19.

Yesterday, OSHA released the following statement regarding recordkeeping requirements and their intent to increase in-person inspections for all types of workplaces. Keep in mind OSHA's Syracuse region encompasses 24 counties and has 7 inspectors.

U.S. Department of Labor Adopts Revised Enforcement Policies For Coronavirus

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has adopted revised policies for enforcing OSHA's requirements with respect to coronavirus as economies reopen in states throughout the country.

Throughout the course of the pandemic, understanding about the transmission and prevention of infection has improved. The government and the private sector have taken rapid and evolving measures to slow the virus's spread, protect employees, and adapt to new ways of doing business.

Now, as states begin reopening their economies, OSHA has issued two revised enforcement policies to ensure employers are taking action to protect their employees.

First, OSHA is increasing in-person inspections at all types of workplaces. The new [enforcement guidance](#) reflects changing circumstances in which many non-critical businesses have begun to reopen in areas of lower community spread. The risk of transmission is lower in specific categories of workplaces, and personal protective equipment potentially needed for inspections is more widely available. OSHA staff will continue to prioritize COVID-19 inspections and will utilize all enforcement tools as OSHA has historically done.

Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA's recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

Under the new policy issued today, OSHA will enforce the [recordkeeping requirements](#) of 29 CFR 1904 for employee coronavirus illnesses for all employers. Given the nature of the disease and community spread, however, in many instances it remains difficult to determine whether a coronavirus illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace. OSHA's guidance emphasizes that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related.

Recording a coronavirus illness does not mean that the employer has violated any OSHA standard. Following existing regulations, employers with 10 or fewer employees and certain employers in low hazard industries have no recording obligations; they need only report work-related coronavirus illnesses that result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.

For further information and resources about the coronavirus disease, please visit OSHA's [coronavirus webpage](#).

Empire State Development Frequently Asked Questions

ESD had created a user-friendly New York Forward business re-opening web site to address frequently asked questions. The helpful link is located at:

<https://esd.ny.gov/nyforward-faq>

Unemployment Matters

Sheats & Bailey, PLLC has provided SBE with advice relating to what an employer can do if an employee refuses to come back to work because he/she is making more on unemployment and/or is making vague claims about feeling unsafe.

An employee must be ready, willing, and able to work, and actively looking for work during each week in which the employee is claiming a benefit. If the employee is sick, or under an order of quarantine, or staying home to care for a child whose school or day care is closed due to COVID-19, or staying home to care for a relative with COVID-19 or a serious illness or has been ordered by a doctor to self-quarantine because of a compromised immune system or advanced age then the employee is not able to work and has a valid reason for refusing employment. If an employer is not providing a safe work environment, i.e. is not following the guidelines for cleaning/disinfecting and the guideline with regard to social distancing and providing masks then the employee has a valid reason to refuse employment.

If the reason an employee is refusing to work because the employee is scared and/or can make more on unemployment and none of the reasons above come into play then that is not a valid reason to refuse employment. In this situation, the employee is not ready, willing and able to work. An employee/claimant is not allowed to collect benefits if there is suitable employment offered and the employee is able to work but just not willing to work.

If you can re-employ a claimant/employee, contact the claimant/employee directly. If the claimant/employee refuses rehire or fails to report to work without a valid reason, then you can notify the NYS Department of Labor in writing at " NYS Department of Labor, PO Box 15130, Albany NY 12212-5130" or Fax to 518-402-6175. Your notice must provide:

- The date the claimant refused work or failed to report to work
- The type of employment offered
- The wages offered for the position

NYS Department of Labor considers an employment offer acceptable to the claimant if it offers the prevailing wage for similar work, even if:

- The amount is less than the claimant earned on the last job
- The amount is less than the salary desired

If the NYS Department of Labor finds the re-employment offer acceptable and the employee had no valid reason for refusing to report to work then the NYS Department of Labor will stop benefits for the employee's refusal to accept employment.

A handwritten signature in blue ink, appearing to read "E. Deane".