



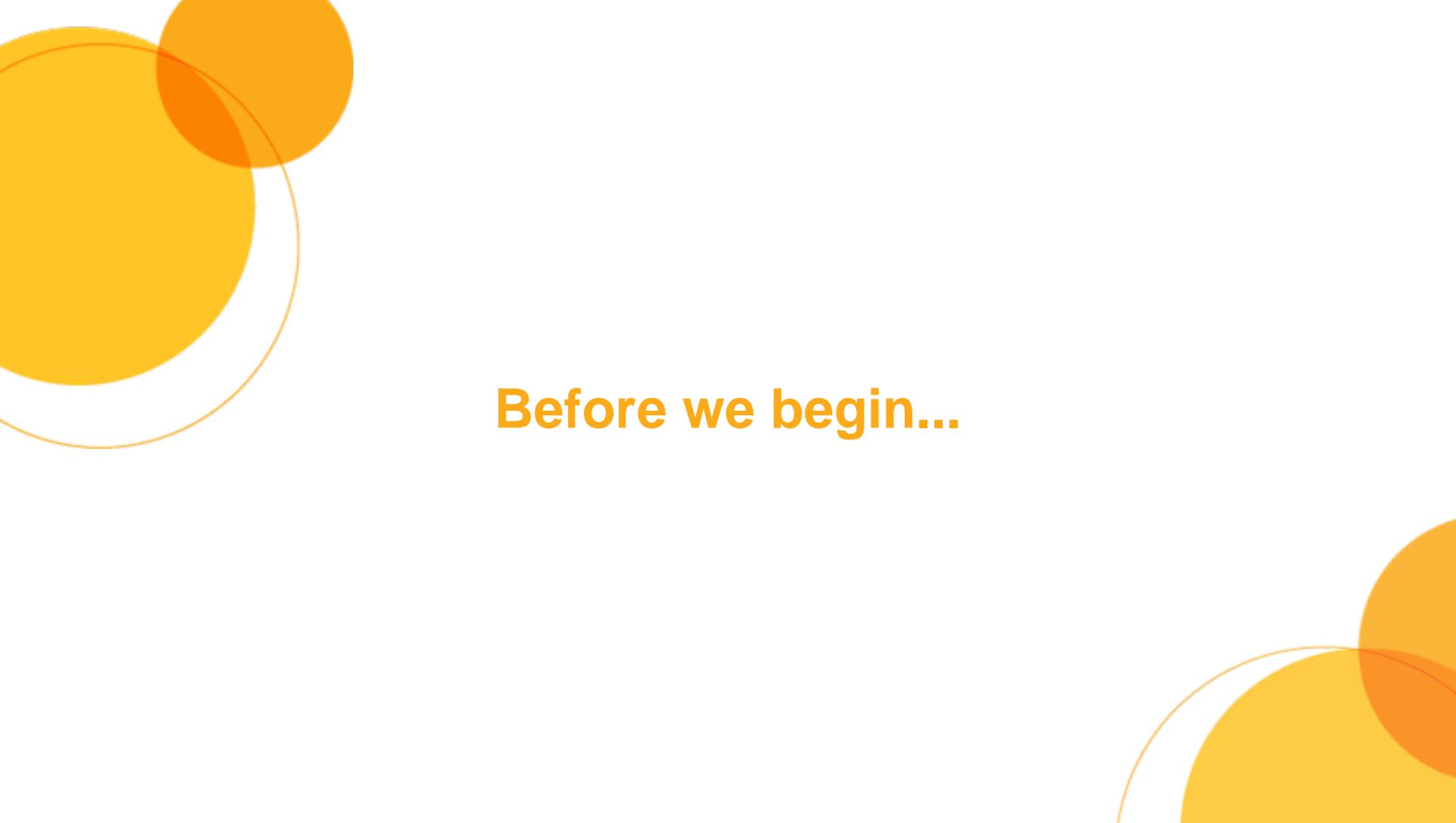
# Roadmap to Reopening: Workers' Compensation & OSHA Updates and Best Safety Practices to Consider

As of April 30, 2020

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The image features a white background with decorative orange circles in the corners. In the top-left corner, there is a large solid orange circle partially overlapping a smaller solid orange circle, with a thin orange outline circle also present. A similar arrangement of overlapping solid orange circles and a thin outline circle is located in the bottom-right corner. Centered on the page is the text "Before we begin..." in a bold, orange, sans-serif font.

**Before we begin...**

# THIS SEMINAR IS NOT LEGAL ADVICE

Although the seminar may contain discussions of legal rights and responsibilities, the seminar itself does not constitute legal advice. This seminar is intended as an informational guide only; therefore, no statement should be considered as legal advice and no action should be taken by your organization in reliance on any statements.

**The COVID-19 situation is changing daily and this presentation is based on current recommendations.**



# AGENDA

- Workers' Compensation Law Changes Due to COVID-19
  - Compensability
  - Premium Calculation
- OSHA Updated Guidelines
  - Reporting
- Roadmap to Reopening
  - OSHA General Industry Standards
  - Safety Practices to Consider

# WORKERS' COMPENSATION

## COMPENSABILITY

### If I get COVID-19-is it covered by workers' compensation?

- First responders, healthcare employees with direct COVID patient contact
- *Other* healthcare workers
- Other “essential” employees

# WORKERS' COMPENSATION

## COMPENSABILITY

- All 50 states have different rules as it relates to when an occupational disease is covered under workers compensation.
- Typically- the disease has to arise out of the specific work site and/or be particular to the work environment ex. Coal miner with lung disease or nurse exposed to hepatitis after a needle stick.

### Changes in the Law

- Several states have issued executive orders or law changes specific to COVID
- Provide coverage for employees who get infected with COVID.
- Mostly for first responders and other healthcare employees that treat COVID patients.

# WORKERS' COMPENSATION COMPENSABILITY

## FIRST RESPONDERS – PRESUMED COMPENSABILITY

- **Police, Fire, EMT workers** who get COVID –automatically presumed that the virus was acquired at work.
- Healthcare workers that directly treat patients with COVID – it is presumed they got the virus at work.

**THESE CLAIMS WILL AUTOMATICALLY BE DEEMED COMPENSABLE**

# WORKERS' COMPENSATION COMPENSABILITY

## OTHER HEALTHCARE WORKERS

- PRESUMPTION OF COMPENSABILITY- **MN, KY, WA**, and others
- Other states likely to find compensability if there is COVID in the facility or if there are multiple other employees with the virus.

## OTHER ESSENTIAL EMPLOYEES

- PRESUMPTION OF COMPENSABILITY- **KY**, other states are contemplating
- Highly FACT-specific analysis will determine if the diagnosis of the disease will be compensable

# WC CLAIMS REPORTING

## QUESTION:

*Should I report the workers' compensation claim?*

# WC CLAIMS REPORTING

## ANSWER:

### Report the workers' compensation claim immediately IF:

- An employee is a **first responder, healthcare worker** with direct contact to COVID patient exposure or other healthcare co-worker and has tested positive, received a positive diagnosis, or has exhibited symptoms and been sent home to quarantine.
- Any **other employee who** has received a **positive diagnosis** via testing or diagnosis from a physician and there a **reasonable** belief that the exposure could have occurred at work.

If an employee tells you that they were exposed by a family member or other known COVID person outside of work, it is not workers' comp and you do not need to report the claim.

# WC LAW CHANGES

## PREMIUM CALCULATIONS

Under review by each state. Not all changes have passed in each state.

- Typically calculated on all **wages** received during a policy period. Earnings, PTO, bonuses, tips, commission, and some expenses are all considered wages for purposes of calculating workers' compensation premium.
- Cost of premium also dependent upon **type of occupation** or job tasks an employee performs.
- Premium is also increased/decreased based upon **loss experience**.

# WC LAW CHANGES

## PREMIUM CALCULATIONS

Under review by each state. Not all changes have passed in each state.

### How COVID has changed calculations

#### 1. WAGES

- Specific to COVID: if the employer continues paying wages or other payroll (bonuses, etc.), that payroll is not to be used in the calculation of premium.

#### 2. OCCUPATION/CLASS CODE

- Specific to COVID: only if an employer has an employee who was in a higher rated class code and that employee completely transitions to at-work-from-home; in clerical functions the class code can be changed to 8810.

*\*\*there are exceptions to this*

#### 3. EXPERIENCE

- Specific to COVID: if an employer has claims for COVID diagnoses, those losses will not be factored into the employer's experience modification rate.

# OSHA and COVID

## REPORTING REQUIREMENTS

OSHA revised guidance since the start of the pandemic

**COVID-19 is a recordable illness and employers are responsible for recording cases of COVID-19 IF:**

- The case is a confirmed case of COVID-19
- **The case is work-related**
- The case involves one or more of the recording criteria

# OSHA and COVID

## REPORTING REQUIREMENTS

### What does it mean for it to be work-related?

- There must be objective evidence
- The evidence must be reasonably available to the employer

OSHA has indicated that in areas of ongoing community transmission employers in industries other than healthcare or first responders may have difficulties making this determination so they are only required to report if the above two conditions are met.

*Example: The Smithfield meat packing plant where multiple cases arose among workers working closely without an alternative explanation.*



# **OSHA AND BEST SAFETY PRACTICES**

# NAVIGATING THE UNKNOWN

## WHAT IS YOUR RISK TOLERANCE?

### Are you going to act like a reasonable employer?

- Employee concerns about workplace safety leading to absenteeism
- Law suits - liability for exposing employees, customers, and clients to virus
- No clear cut required (enforceable) guidance from OSHA
- No case law to establish guidance around what reasonable employers should do

# OSHA AND COVID

## GENERAL INDUSTRY GUIDELINES,

### Risk factors for worker exposure to SARS-CoV-2 include:

- Job duties involving close (within 6 feet) contact with infected people or other sources of the virus. Includes close contact with patients in healthcare and coworkers, customers, and/or members of the general public in almost all sectors.
- Social conditions, such as ongoing transmission in areas of high population density and frequent person-to-person contact, either in the community or in the workplace.
- Travel to areas highly affected by COVID-19 and gathering in large groups.



# OSHA AND COVID

## GENERAL INDUSTRY GUIDELINES

**There is NO Specific OSHA standard covering COVID-19 exposure**

- General Duty Clause – Requires employers to furnish a work environment free from recognized hazards that are causing or likely to cause death or serious physical harm
- PPE Standard – require using gloves, eye, and face protection

# OSHA AND COVID

## GENERAL INDUSTRY GUIDELINES

### Very High Exposure

- Healthcare on COVID patients
- Healthcare or labs handling COVID specimens
- Morgue workers handling COVID deaths

### High Exposure

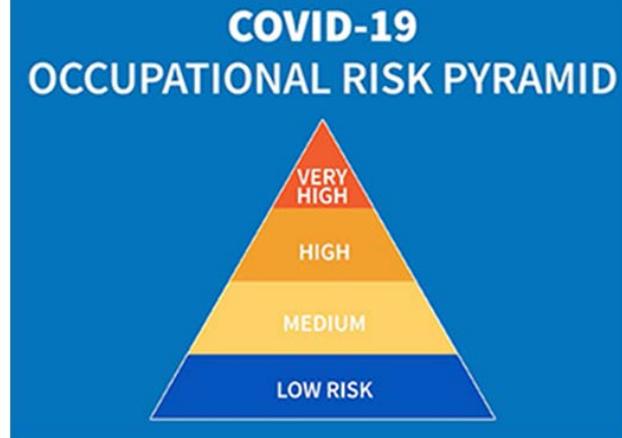
- Healthcare support staff or other hospital staff not directly treating COVID patients but delivering supplies or services
- Medical transport workers

### Medium Exposure

- Require frequent or close contact with those who may be infected
- Workers with general public contact where there is ongoing community transmission

### Lower Exposure

- Workers who do not have contact with COVID patients or the general public or other co-workers



# OSHA AND COVID

## GENERAL INDUSTRY GUIDELINES

### Very High, and High Exposure

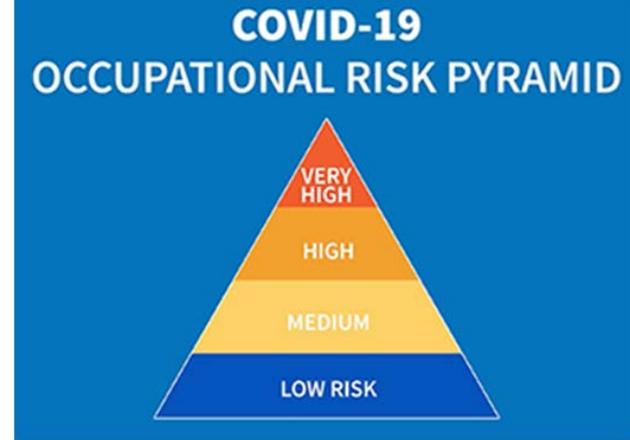
- Those in this category are likely already highly regulated and following department of health and CDC standards

### Medium Exposure

- Install physical barriers- plastic shields
- Offer face masks to employees & customers
- Train employees on proper hygiene
- Limit public access
- Consider strategies to eliminate face to face contact or close working conditions

### Lower Exposure

- No additional engineering controls are recommended



# OSHA AND COVID

## GENERAL INDUSTRY GUIDELINES

OSHA has issued guidance for specific Industries: See their website - [OSHA.gov](https://www.osha-slc.gov)

Construction

Manufacturing

Package Delivery

Retail Workers

# BEST PRACTICES - Across all the individual standards

- Encourage workers to **stay home if sick** and adopt **leave of absence** programs
- Provide **hand washing stations or hand sanitizer** in multiple easily accessible areas
- Maintain **regular housekeeping and disinfecting** especially of common areas – bathrooms and regularly touched surfaces
- Practice **social distancing of 6 FT where possible** - mark floors for customers, move work stations, limit capacity, work employees in different shifts, re-design work processes, install plexiglass partitions
- **Train employees** in proper hygiene
- Allow and/or **provide masks** for employees and customers



# BEST PRACTICES

## MASKS

To-date 7 states are requiring employees to cover their face during work:  
**CT, HI, MD, NJ, NY, PA, RI**

- **Exception-** if it compromises the health or safety of an employee because of a medical condition- no proof required
- **Remember-** if it is required PPE or you choose to require it, then the **employer** must provide it – and you must develop a policy or program for adherence and requirements

# BEST PRACTICES

## What would a reasonable employer do in the situation?

- Require **temperature checks** of all employees before reporting to work?
- Require testing of all employees for the virus or anti-bodies?
- Use a waiver form or notice for customers or clients?
- Do you wipe down-disinfect counters, tables, chairs, bathrooms- after a single use by an employee or patron?
- Do you require a gown smock or other clothing cover when working within 6 feet of the general public?

# BEST PRACTICES

## What would a reasonable employer do in the situation?

### Considerations:

- What are the large employers doing? Marriot, Disney, the airlines, large restaurant chains **Seek guidance from industry leaders**
- **Review your state's plan and requirements** – a reasonable employer would not open before the state's phased-in approach



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