TEMPORARY REMOTE EMPLOYEE CONSIDERATIONS & REOPENING STRATEGIES

IMLA ANNUAL CONFERENCE
September 22, 2020

Roberta “Robin” Cross
Township Attorney
2801 Technology Forest Blvd.
The Woodlands, Texas 77381
(281) 210-3800
rcross@thewoodlandstownship-tx.gov

CORONAVIRUS & THE NEW WORKPLACE

- Applicable Rules & Regulations
- Exposure Determination
- Exposure Control Plan
- Establish Workplace Procedures
- Employee Training & Resources



PROTECT Employees from SARS-CoV-2 Exposure & COVID-19 Infection

RELEVANT OSHA STANDARDS - OSHA COVID19 UPDATED INTERIM ENFORCEMENT GUIDANCE

- Personal Protective Equipment Part 33 (OSHA 1910 Subpart I)
- Hazard Communication Part 430 (OSHA 1910.1200)
- Respiratory Protection Part 451 (OSHA 1910.134)
- Recordkeeping Part 11 (29 CFR 1904)
- Sanitation Part 474 (OSHA 1910.141)
- General Duty OSHA Act 154 Section 11(a) (OSHAct Sec 5(a)(1))

OSHA WORKPLACE GUIDANCE – Advisory only; not a standard or a regulation

https://www.osha.gov/Publications/OSHA3990.pdf

- Implement COVID-19 Exposure Control Plan/Response Plan

- Implement Engineering and Administrative Controls

- Temporary PPE Hazard Assessment (consider gloves, gowns, masks).

- Signage/communication for employees/guests

PROTECTIONS TO CONSIDER

- ID and require sick employees to *stay home*

- Limit workforce occupancy/staggered & rotating shifts

- Provide adequate supply alcohol-based hand sanitizer, cleaning supplies, and hand soap

- Enhance workplace housekeeping program
- Discourage shared use of phones, desks, offices, tools and equipment

EXPOSURE DETEMINATION



THE WOODLANDS
TOWNSHIP

EXPOSURE DETERMINATION

VERY HIGH RISK

- High potential exposure to known or suspected sources of COVID-19
- Healthcare, laboratory, morgue employees during specific procedures

HIGH RISK

- High potential exposure to known or suspected sources of COVID-19
- Could include - licensed health care professionals, medical first responders, nursing home employees, law enforcement, correctional officers, or mortuary workers

EXPOSURE DETERMINATION (cont.)

MEDIUM RISK

- Jobs that require frequent and/or close contact (within 6 ft) with people who may be infected, but are not known/ suspected COVID-19 patients
- In low community transmission areas, workers in this risk group may have frequent contact with travelers who may return from locations with widespread SARS-CoV-2 transmission
- In areas where there is ongoing community transmission. Workers may have contact with the general public (for example, schools, high-population-density work environments, high-volume retail settings).

EXPOSURE DETERMINATION *(cont.)*

- **LOWER RISK**
  - Jobs that don't require contact with people known/suspected of being infected with coronavirus
  - No frequent close contact (within 6 ft.) with the general public
  - Minimal contact with co-workers

THE WOODLANDS TOWNSHIP

WHERE/HOW/WHAT-SOURCES OF EXPOSURE

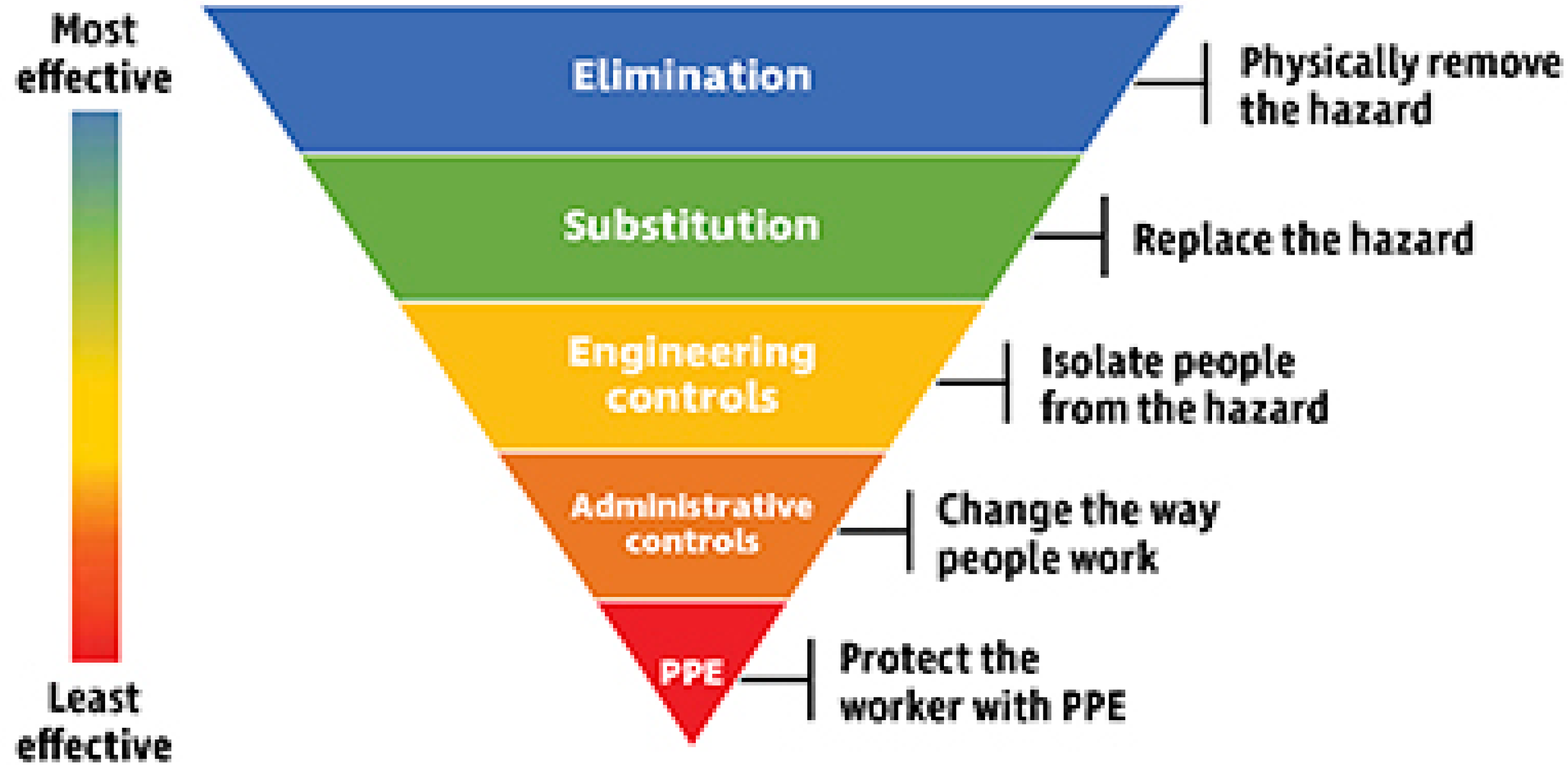
- General public
- Customers/Visitors
- Co-workers Assess methods of social distancing
- Staggered work shifts, lunch & breaks
- Downsizing operations
- Teleworking from home ; Cross train on-site workers to perform critical tasks
- Assess job tasks with shared equipment & workstations
- Access to handwashing facilities & hand sanitizer (≥60% alcohol)
- Cleaning & disinfection procedures & materials for workstations or common work areas (copiers, etc.)

EXPOSURE CONTROL PLAN – KEY ELEMENTS

- An exposure control plan should include:
- Exposure determination
- Detail measures to prevent employee exposure, including any:
  - Engineering controls
  - Administrative controls
  - Hand hygiene and environmental surface disinfection Personal protective equipment
  - Health surveillance
  - Training
- Use current CDC guidance
- Employer shall use preventive measures commensurate to the exposure risk category

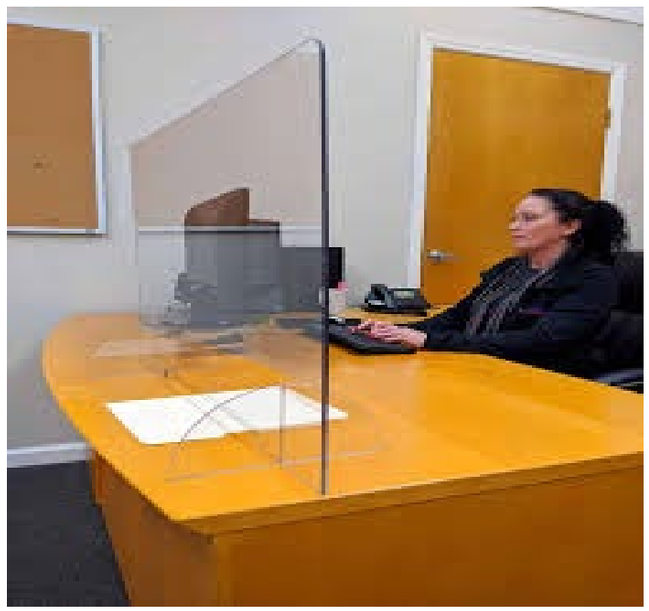
EXPOSURE CONTROL PLAN – KEY ELEMENTS

NIOSH HIERARCHY OF CONTROLS



EXPOSURE CONTROLS – ENGINEERING CONTROLS

- ❑ High-efficiency Air Filters



- ❑ Increased Ventilation Rates

- ❑ Physical Barriers. Clear plastic barriers, sneeze guard, plexiglass

- ❑ Re-opening/installing drive-thru or window drop off for e.g., utility payments

4

EXPOSURE CONTROL – ADMINISTRATIVE CONTROLS

- Implement flexible work hours & staggered shifts and breaks
- Implement telework, teleconferencing & web conferencing
- Increase the physical space between employees at the worksite
- Move machines & equipment to increase distances between employees
- Practice social distancing & provide visual cues
- Increase the physical space between employees & customers
- Encourage hand hygiene etiquette & use noncontact methods of greeting
- Require the use of cloth face coverings by employees & customers.
- Post signs related to COVID-19 signs, symptoms & related resources

PERSONAL PROTECTIVE EQUIPMENT (PPE)

VERY HIGH & HIGH RISK EXPOSURE:

Workers shall wear

- Gloves
- Gown
- Face shield or goggles and
- N95 or higher respiratory protection



MEDIUM RISK EXPOSURE:

Workers may need to wear a combination of

- Gloves
- Gown
- Face mask
- Face shield or goggles



PPE *(cont.)*

- PPE worn will depend on results of job task hazard assessment/state orders
- Masks are mandatory when social distancing and physical barriers are not possible
- City may make it mandatory for visitors to wear a mask to enter their facilities

LOWER RISK EXPOSURE

- No need for additional PPE beyond what is typically used for job tasks
- Masks may be voluntary when social distancing is possible

RESPIRATORY PROTECTION

- **Respiratory Protection – OSHA 29 CFR 1910.134** https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134
- Respirators vs. Surgical Masks vs. “Face Masks”
  - https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#cloth-face-coverings





WORKPLACE PROCEDURES – KEY ELEMENTS

- Develop an Infectious Disease Preparedness and Response Plan
  - Develop an Exposure Control Plan
  - Identify Workplace COVID-19 Coordinator
  - Examine & Update Policies
    - ❖ Telework
    - ❖ Leave/Employee Compensation
    - ❖ Identify Essential Employees & Business Functions
- Establish Chain of Communication
- Train Employees on new procedures and policies

WORKPLACE PROCEDURES – Key Elements

- Employee screening procedures - prior to work
  - Temp/self-monitoring & symptoms (Cough, fever, shortness of breath)
  - Require employees to report symptoms, self-isolate, notify supervisors and stay home
  - Don't allow employees to return until home isolation criteria is met (Follow CDC Guidance)
  - Inform other employees of possible workplace exposure (ADA & HIPAA compliant – keep confidentiality)
- Social Distancing – minimum of 6 ft. Provide demarcation lines
- All in-person work must adhere to social distancing practices and measures
- Install physical barriers between customers and/or employees Non-medical grade face coverings

Reasons for a Workplace Plan

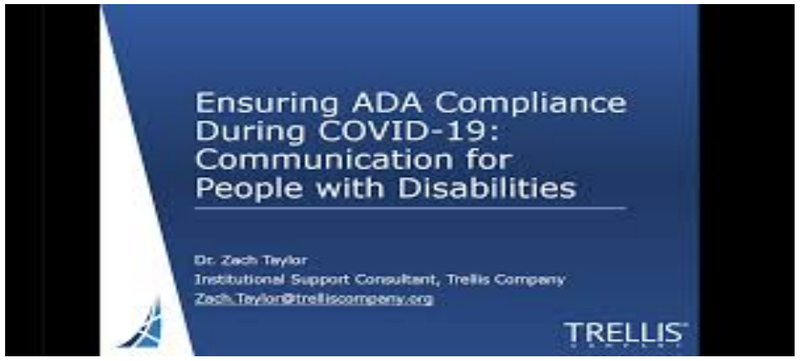
1. Addresses Employees concerns/fears
   a. reduces refusals to work
   b. avoids retaliation dispute
   c. reduces employee complaints
2. Address concerns of regulatory agencies
3. Constituents need to know your city has taken necessary steps to address at-work transmission
4. A single source document makes it easier to make the countless updates like the recent DOL update and new CDC guidance
5. Reduce transmission risk in the workplace



COVID-19 AND THE ADA - Overview

- Scheduling accommodation requests
- Accommodating work schedules to avoid peak public transit hours
- Allocating scarce medical resources and the ADA
- Addressing employee requests regarding COVID-19 hot spots
- Reconfiguring the workplace to provide for social distancing

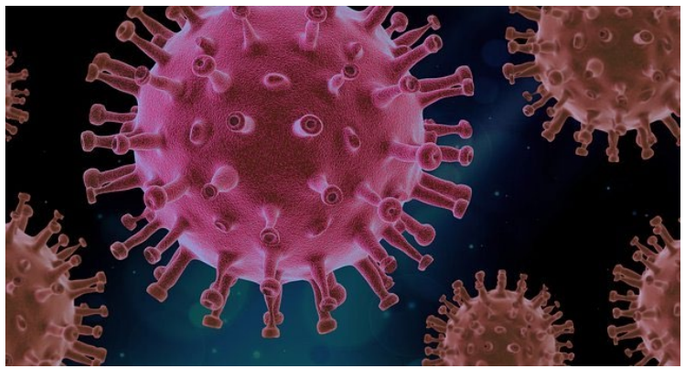




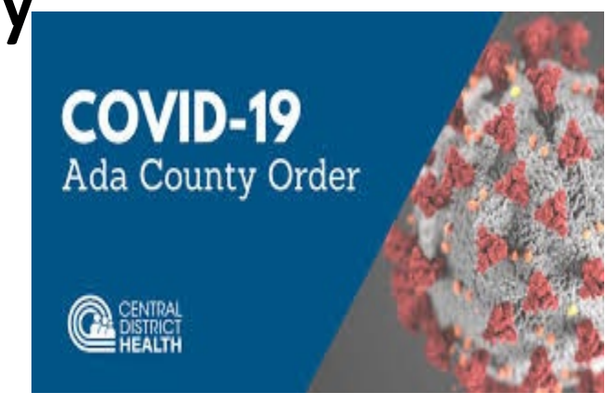
COVID-19 AND THE FMLA/FFCRA

EXAMPLES OF STATE AND LOCAL COVID-19 LEAVE STATUTES & ORDINANCES

- Colorado Health Emergency Leave with Pay (Colorado HELP)



- San Francisco Public Health Emergency Leave Ordinance (PHELO)



- San Jose COVID-19 Paid Sick Leave Ordinance

COVID-19 AND THE FMLA/FFCRA Update

- On August 3, 2020, U.S. District Judge J. Paul Oetken issued a decision in State of New York v. U.S. Department of Labor, et al., No. 1:20-cv-03020 (S.D.N.Y. Aug. 3, 2020), vacating several portions of DOL's regs re: The Families First Coronavirus Response Act ("FFCRA").

- The Court vacated: (1) the "work-availability" requirement; (2) the definition of "health care provider"; (3) the requirement that an employee secure employer consent for intermittent leave; and (4) the requirement that documentation be provided before taking leave.

- This decision impacts every employer covered by the FFCRA in significant ways.

12

COVID-19 AND THE FMLA/FFCRA Update

The Court's Decision Vacates Four Key Portions of the Final Rule. The Court struck down the Final Rule's

1. **"Work-Availability" Requirement**. The Final Rule specified that employees weren't entitled to FFCRA-paid leave benefits if their inability to work was due to their employer having no work available. Given that te COVID-19 crisis caused the temporary slowdown of cities nationwide, causing in turn a decrease in work immediately available for employees otherwise remaining employed, it frustrated legislative intent.

2. Overly broad **Definition of "Health Care Provider"** – The Final Rule had so broadly defined "health care providers" to encompass virtually any employee of an employer in the health care field.

THE FMLA/FFCRA Update (cont.)

The Court also struck down the Final Rule's

3. **Intermittent Leave Provisions.** The Final Rule had restricted intermittent leave unless: (1) the employee and employer agreed to the use of intermittent leave; and (2) if the employee continued to report to an employer's worksite, intermittent leave was permitted solely to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, because of reasons related to COVID-19.

4. **Requirement that Employees Provide Advance Documentation** Final Rule's requirement for advance-documentation prior to taking leave, is inconsistent with the FFCRA.

REMOTING…

1. **Define Eligibility & Duration**

- Whom covered & when policy applies
- Avoid definitive dates of return to normal or end of telework policy
- But do include a provision that it can be discontinued at will and at any time

2. **Working expectations –**

- Design policies around outcomes, not workflows and processes. Focus on work output
- Create processes for collaboration & for communication – include expectations of availability, responsiveness & what modes of communication are not to be used

REMOTING…

1. **Define Eligibility & Duration**

- Whom covered & when policy applies
- Avoid definitive dates of return to normal or end of telework policy
- But do include a provision that it can be discontinued at will and at any time

2. **Working expectations –**

- Design policies around outcomes, not workflows and processes. Focus on work output
- Create processes for collaboration & for communication – include expectations of availability, responsiveness & what modes of communication are not to be used

REMOTING…

3. Legal Issues in remotely working

- FLSA – Recording hours of work: Employees need to know the hours they are expected to work, what they should do if they need to work outside of scheduled hours, how to report time & how to communicate about unexpected overtime
- Need to include process for reporting and for when employees should and should not be working.
- Comply with state law provisions regarding meal breaks, rest breaks, and number of consecutive hours which can be worked remotely.
- Worker's Comp – environment and timely reporting.

12

REMOTING…

4. Technology & Supplies

- Employers need to be clear about what equipment and support/resources they will provide FLSA – Recording hours of work: mployees need to know the hours they are expected to work, what they should do if they need to work outside of scheduled hours, how to report time & how to communicate about unexpected overtime
- Need to include process for reporting and for when employees should and should not be working.
- Comply with state law provisions regarding meal breaks, rest breaks, and number of consecutive hours which can be worked remotely.
- Worker's Comp – environment and timely reporting.