



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

March 19, 2020

New Mexico Occupational Health and Safety Bureau (OHSB) Directive 20-07

Subject: State Emphasis Program (SEP) for OHSB activities involving worker protection against the novel coronavirus and resulting illness, COVID-19.

- A. Purpose: The purpose of this notice is to establish an enforcement initiative and efforts of cooperative programs to prevent serious illness and mortality resulting from worker exposure to the novel coronavirus disease, COVID-19, in workplaces.
- B. Scope: This notice applies to worksites in the State of New Mexico within OHSB jurisdiction.
- C. References: The following documents are referenced in or applicable to this instruction.
 1. Executive Order 2020-004, Order Declaring a State of Public Health Emergency, March 11, 2020
 2. Amended Public Health Order, New Mexico Department of Health, Public Health Emergency Order Limiting Mass Gatherings and Implementing Other Restrictions Due to COVID-19, March 19, 2020
 3. New Mexico Occupational Health and Safety Act
 4. New Mexico Field Operations Manual
 5. OSHA Information System (OIS) Modules for Enforcement, Consultation and Compliance Assistance, current and subsequent versions
 6. OSHA Instruction CPL 2-0.102.A, November 10, 1999, Procedures for Approval of Local Emphasis Programs (LEP)
 7. OSHA Instruction CPL 2-00-051, February 23, 2005, Exemptions and Limitations Under the Appropriations Act, with current Appendix A
- D. Cancellation: This notice does not cancel any OHSB notice.

- E. Expiration: This notice is in effect for the duration of Executive Order 2020-004, Order Declaring a State of Public Health Emergency, issued by the Governor of New Mexico on March 11, 2020, and may be renewed as necessary.
- F. Action: OHSB personnel will ensure the procedures contained in this notice are followed when conducting SEP activities for the novel coronavirus, COVID-19.
- G. Background: On March 11, 2020, Governor Michelle Lujan Grisham declared a public health emergency in response to the pandemic occurrence of the novel coronavirus, COVID-19. On March 19, 2020, New Mexico Department of Health Secretary Kathyleen M. Kunkel issued an Amended Public Health Order, Public Health Emergency Order Limiting Mass Gatherings and Implementing Other Restrictions Due to COVID-19. The Amended Public Health Order authorizes the Department of Environment to take all appropriate steps to ensure compliance with the Order and requires all public and private employers to comply with the Order and any instructions provided by State departments regarding COVID-19.

Under the New Mexico Occupational Health and Safety Act (Act), employers are required to comply with regulations promulgated by the Environmental Improvement Board including incorporated federal standards. A number of these regulations and standards address measures that will protect employees from exposure to COVID-19.

In addition to applicable regulations and standards, the Act's general duty clause covers recognized hazards that are likely to cause death or serious physical harm to employees. Under the general duty clause, an employer is required to implement feasible methods to control recognized hazards. For COVID-19, feasible abatement methods include those established through executive order, recommendations from public health authorities, occupational health authorities including OHSB, and industry-established best practices effective in controlling the hazards of COVID-19. Incorporating guidelines from the New Mexico Department of Health, federal OSHA and CDC, OHSB developed instruction and recommendations for employer's in controlling exposures to COVID-19, as contained in Appendix 1 of this notice.

- H. Procedures: During the period covered by this notice, the OHSB Compliance Section will investigate all valid unprogrammed activity (UPA) referencing COVID-19. To protect OHSB staff, exercise social distancing principles, and quickly and efficiently address associated health hazards, OHSB will initially respond to all UPA reports via email/phone rapid response investigation (RRI). The following procedures will be followed.
1. Each UPA will be processed in accordance with the New Mexico Field Operations Manual (FOM).
 2. The compliance manager, supervisor or designee will review each incoming UPA and assign to the appropriate Compliance Officer (CO) for RRI. If the nature of the allegation(s) indicates a concern involving complex industrial hygiene controls, a health CO will be assigned to the UPA as availability

permits. Otherwise, assignments may include a health or safety CO based on availability due to the expectation of a high volume of incoming UPAs.

3. For each UPA assigned for RRI, the CO will make telephone contact with the employer to identify an employer representative. The CO will confirm the name and address of the employer and obtain the name, phone number, and email address of the employer representative to whom correspondence will be sent. These tasks will occur within one day of the assignment if possible.
4. During the phone call, the CO will explain the RRI process and will communicate the UPA allegations, the hazards of COVID-19, applicable OHSB regulations and requirements, web resources, the timeline for response, and specific documentation expected from the employer in the response.
5. On the same day as the telephone contact, the assigned CO will draft and email a letter (template attached as Appendix B) to the employer listing the allegations, web resources, due date for response, expected supporting documentation, and telephone/email investigation process.
6. The letter will indicate that the employer must investigate the allegations within one working day and provide the written response and all expected supporting documentation within two working days of receiving the letter.
7. If the employer responds within the deadline, the CO will review the response to determine if it is satisfactory.
8. If the employer does not respond within the deadline or responds with inadequate evidence of compliance, the CO will immediately notify OHSB management for a determination on whether an onsite inspection is warranted. Any inspection conducted under this SEP will be in accordance with the FOM with consideration of all practicable measures needed to protect the health of OHSB personnel and the public.
9. OHSB may inspect a reasonable number of establishments providing an adequate response to ensure validity of responses and reserves the right to re-inspect any worksite that has a fatality, reportable injury or illness, or report of imminent danger, at any time during the period covered by this notice.

I. Outreach:

During the period covered by this notice, OHSB compliance assistance specialists, consultants, and COs when not engaged in covered enforcement activities, will aid employers, employees and other stakeholders by providing pertinent information to protect employees from COVID-19. This includes the following activities:

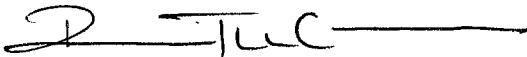
1. Responding to COVID-19 inquiries via email and phone;
2. Conducting outreach activities by remote means;
3. Developing and distributing outreach materials and publications; and,
4. Providing technical assistance as requested.

J. OIS Recording: Activities pertaining to this SEP will be recorded in the OIS following current instructions in the each of the respective modules in the OIS User Guides for UPA and consultation assistance, and in ServerShare> EPD> OHSB> Compliance> Compliance Assistance for CAS and CO assistance activities. The identifier code will be "N-16-COVID-19".

K. Evaluation: An evaluation of the effectiveness of this state emphasis program will be conducted at the end of the fiscal year. An evaluation report will be written and submitted to the Bureau Chief within 90 days of the end of the fiscal year. The evaluation report may be included as part of the New Mexico State OSHA Annual Report (SOAR). Elements to be considered in the evaluation include:

1. Effectiveness of the SEP targeting system;
2. Number of sites and/or operations affected by the program;
3. Number of establishments that were in violation of OHSB standards and/or general duty requirements of the OHS Act;
4. Number of employees removed from risk;
5. Number of hazards abated; and
6. Modifications needed to improve the effectiveness of the program if continued into the subsequent fiscal year.

By and Under the Authority of



Robert Genoway
Chief, Occupational Health and Safety Bureau



New Mexico Environment Department

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Recommendations for employers regarding COVID-19

March 17, 2020

In light of the March 11 public health emergency declared by Gov. Michelle Lujan Grisham, the New Mexico Environment Department Occupational Health and Safety Bureau is issuing the recommendations below to employers in the state.

New Mexico law states that every employer must provide a place of employment that is free from recognized hazards that are likely to cause death or physical harm to their employees.

Anyone with symptoms of COVID-19, including a fever, cough, runny nose and difficulty breathing should call (855) 600-3453 for direction from the New Mexico Department of Health.

The New Mexico Environment Department Occupational Health and Safety Bureau also recommends the following basic precautions for the workplace:

1. Actively encourage workers to stay home or go home if they are sick and send workers with acute respiratory illness symptoms home immediately.
2. Provide workers, customers and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizer containing at least 60% alcohol.
3. Train employees on:
 - Hand hygiene.
 - Cough and sneeze etiquette.
 - Avoiding touching eyes, nose, and mouth with unwashed hands.
 - Avoiding sharing personal items with co-workers (i.e., dishes, cups, utensils, towels).
4. Minimize contact among workers, clients, and customers by:
 - Replacing face-to-face meetings with virtual communications.
 - Implementing telework.
 - Establishing alternating days or extra shifts to reduce the total number of employees working in a facility at a given time.
5. Do not allow workers to use another worker's equipment, including phones, desks, offices and other work tools.
6. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment and other elements of the work environment. When choosing cleaning chemicals, consult information on U.S. Environmental Protection Agency (EPA)-approved disinfectant labels: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.
7. Discontinue nonessential travel to locations with ongoing COVID-19 outbreaks. Regularly check CDC travel warning levels at: www.cdc.gov/coronavirus/2019-ncov/travelers.
8. Develop an emergency communication plan and provide a forum for answering workers' questions and addressing concerns. If a plan is in place, review and update the plan as needed.

Contact us:

New Mexico OSHA
NMENV-OSHA@state.nm.us

Additional resources:

Centers for Disease Control
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Federal OSHA
<https://www.osha.gov/>



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**NEW MEXICO OCCUPATIONAL HEALTH AND SAFETY BUREAU
NOVEL CORONAVIRUS COVID-19 RAPID RESPONSE INVESTIGATION – NOTICE TO EMPLOYER**

{Date}

Re: {UPA #}

{Name}
{Address}
{Address}

Dear {Name}:

The New Mexico Environment Department (NMED) Occupational Health and Safety Bureau (OHSB), received a complaint alleging occupational health hazards related to the novel coronavirus and coronavirus disease 2019, COVID-19, at your worksite located at:

{Address}
{Address}

A list of the alleged hazard(s) is as follows:

1.

On March 11, 2020, Governor Michelle Lujan Grisham declared a public health emergency in response to the pandemic occurrence of the novel coronavirus. On March 19, 2020, New Mexico Department of Health Secretary Kathyleen M. Kunkel issued an Amended Public Health Order, Public Health Emergency Order Limiting Mass Gatherings and Implementing Other Restrictions Due to COVID-19. The Amended Public Health Order authorizes NMED take all appropriate steps to ensure compliance with the Order and requires all public and private employers to comply with the Order and any instructions provided by NMED regarding COVID-19. Under the New Mexico Occupational Health and Safety Act (“the Act”), employers are required to comply with regulations promulgated by the Environmental Improvement Board including incorporated federal standards. A number of these regulations and standards address measures that will protect employees from exposure to coronavirus.

In addition to applicable regulations and standards, the Act’s general duty clause covers recognized hazards that are likely to cause death or serious physical harm to employees. Under the general duty clause, an employer is required to implement feasible methods to control recognized hazards. For coronavirus, feasible abatement methods include those noticed through executive order, recommended

by public and occupational health authorities including OHSB, and established through industry best practices effective in controlling the hazards of coronavirus disease 2019 (COVID-19), which is the illness caused by coronavirus. Information about COVID-19, and feasible and acceptable measures for controlling employee exposure in the workplace as provided by occupational and public health authorities, can be found at:

- New Mexico OHSB COVID-19 website – https://www.env.nm.gov/occupational_health_safety/
- Federal OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- Federal CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Pursuant to this letter, the OHSB requests that you immediately investigate the alleged conditions and make any necessary corrections or modifications to protect employee health within one working day of your receipt of this letter.

Within two working days of your receipt of this letter, please provide the OHSB with the written results of your investigation and attach supporting documentation of your findings. Include a description of corrective action instituted, documents verifying such control measures, and photographs of the corrected condition. In addition, please provide a contact person from your organization, including name, title and contact information, in the event further information is necessary. In particular, the Department will need evidence of the following:

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Please see Attachment 1 to this letter, *Recommendations to Employers Regarding COVID-19*, to serve as a guide in preparing your investigation results.

Failure to provide a written response within two days indicating what action you have taken may result in an inspection of your workplace. The Department's policy is to conduct an inspection on a sample of cases when satisfactory responses are received. You are requested to post a copy of this letter and your response to this letter in a readily accessible area for review by all affected employees for no less than five working days.

Section 25 of the Act states that an employer shall not discriminate against an employee for exercising his or her rights under the Act. If an employee believes that they were discharged or otherwise discriminated against as a result of filing a complaint or exercising rights provided under the Act, the employee may file a whistleblower discrimination complaint with OHSB.

If you have any questions concerning this matter, please contact me at (insert telephone number).
Sincerely,

{Name}

{Title}

{Signers initials in capital letters}:{person preparing letter initials – lower case}