

Employers: It's Time to Have Your Workplace Safety Contingency Plan Ready!

Whether you are an employer authorized to have employees working on-site during Puerto Rico's mandated lockdown or you are getting ready to have your workforce return to work, the Puerto Rico Secretary of Labor is advising employers, including those in the private sector, to establish a contingency plan to manage workplace safety. In her April 15, 2020 guidance, she presses upon the responsibility to provide a safe workplace for employees, free from recognized hazards likely to cause death or serious physical harm. With this legal obligation in mind and the heightened state of alert and exposure created by the COVID-19 pandemic, employers must evaluate such risks and develop a plan to control and/or eliminate them.

In attaining a plan adequate for employers' working areas and their industries, employers are advised to first assess risks following OSHA's risk control hierarchy. These controls include (a) Engineering Controls (most commonly, reducing exposure without relying on worker behavior, but, for example, using physical barriers); (b) Administrative Controls (typically, changes in workplace policy or procedures to reduce exposure to a hazards; such as, staying six feet apart from others, scheduled office cleaning, limiting number of persons at work or common areas); and, ultimately, (c) Personal Protective Equipment (PPE) which usually should not take the place of other preventive strategies and needs to be properly fitted, used and disposed).

Second, the Secretary of Labor advises employers on the minimum requirements of their written COVID-19 Exposure Control Contingency Plan, which should cover:

1. The particular conditions of each workplace;
2. General information about COVID-19 and recommendations and preventive advise issued by relevant agencies;
3. Details of the monitoring and screening process of personnel prior to entering the workplace and the procedure to manage cases of employees with symptoms or who test positive to COVID-19;
4. The number of employees designated to work per day, scheduled rotating shifts and the like, and control measures that will be taken to achieve personal distancing;
5. Methods, plans and inventory of products to maintain a clean and disinfected establishment;
6. Procedures to promote and maintain employees' good hygiene practices including distribution of related products;
7. Description and evidence of PPE when determined to be necessary for employees (which will be provided by the employer free of cost);
8. Description and evidence of training to employees on the correct use, limitations and disposal of PPE;
9. Designee in charge of evaluating and monitoring safety, risks and needs relating to the COVID-19 pandemic;
10. Evidence of discussion of the contingency plan with staff.

The PR Secretary of Labor also directs employers to be cognizant of and address the possible risks and effects of the "sick building syndrome" and the air quality inside some buildings that have been closed or partially functioning for long periods of time as these risks could set back efforts to prevent the spread of COVID-19 in the workplace.

There is no deadline to have the Exposure Control Contingency Plan in place. To avoid legal risks, OSHA violations and applicable penalties, employers are advised to develop and implement such plans as soon as possible.

Our COVID-19 multidisciplinary taskforce comprised of practitioners in our different departments, including Labor and Employment, is available to assist you address questions and legal and practical considerations pertaining to this evolving topic.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

Katherine González-Valentín kgonzalez@ferraiuoli.com	René J. Avilés-García raviles@ferraiuoli.com	María J. (Nani) Marchand-Sánchez nmarchand@ferraiuoli.com
Patricia M. Marvez-Valiente pmarvez@ferraiuoli.com	Gregory Figueroa- Rosario gfigueroa@ferraiuoli.com	Gisela Sánchez-Alemán gsanchez@ferraiuoli.com
		Nicole G. Rodríguez-Velázquez nrodriguez@ferraiuoli.com