



What Employers Need to Know About Essential Workers and PPE

By Megan Gates

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While much of the world remains under a stay home order, many professionals have been classified as essential personnel who are continuing to report to work, while other employees are being asked to return to their physical places of employment.

To learn more about what responsibility employers have to provide personal protective equipment (PPE) to employees, we spoke with Eddie Sorrells, chief operating officer and general counsel at DSI Security Services. DSI operates in 25 different U.S. states with staff deployed across multiple verticals, including healthcare and manufacturing facilities.

Here is a transcript of the conversation, which has been lightly edited for clarity.

SM: Many employers are concerned about liability and protecting workers given the current PPE shortage. Are there areas of liability they should be aware of if they require employees to come to work without appropriate PPE?

Sorrells: There are. Liability can go in many different ways. We do a fair amount of work in Los Angeles and they issued an order that all essential workers have to have face coverings while at work. So that was an additional government mandate that employers have to comply with. And that order said either the employer has to supply the PPE or reimburse the employee for supplying it themselves, which isn't radically different from usual circumstances.

What I've been telling people is that COVID-19 is the big focus now. But if you go back to basics, the area of liability really is twofold. The main one, I'm speaking about America specifically, is the U.S. Occupational Safety and Health Administration (OSHA), which will tell all employers, 'You have an obligation first to assess the hazards in your workplace.'

Using COVID-19 as an obvious example here, assessing I'm putting an employee in a hospital. Employers in a healthcare environment have a very high risk of COVID-19 transmission. So when you do that employer mandated hazard assessment that OSHA says you have to do, you're going to be hard pressed not to come back and say that person requires a certain amount of PPE.

Feedback

The next step is determining what is that PPE? It would be no different than a construction site where if you are working, you would obviously need a hardhat, eye protection and ear protection if you're operating heavy machinery. In this case (with COVID-19) it would be a mask, a face shield and maybe gloves depending on the environment.

OSHA came out with recommendations specific to COVID-19 (<https://www.osha.gov/Publications/OSHA3990.pdf>), where it talks about how to navigate these waters. But OSHA does not have any hard, fast standards on how to deal with pandemics or infectious diseases in the workplace. Each company has to consider its environments and make the determination: Does this require PPE? Should I be supplying these employees with masks, gloves, etc.?

OSHA also says in normal times, and certainly now, you have to provide training. It is more complicated than saying, 'Here's a mask. Here's some gloves.' Employers are required to provide training on when is this PPE necessary? What PPE should you be using?

I'm sure we've all seen things on social media about wearing gloves. If someone is walking around on a site that's high risk and wearing the same pair of gloves all day long while they're touching their face or coming into contact with people, those gloves may be contributing to the problem if there's not proper training.

OSHA will also tell you that you have to train your employees and notify them of the limitations. That's the biggest area of liability, if an employee claims I was not provided appropriate PPE and there's some type of workplace incident that occurs.

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SM: If employees are required to provide their own PPE, how would you outline what the expectations are for that PPE?

Sorrells: The most recent and infamous example is the U.S. surgeon general (<https://www.youtube.com/watch?v=tPx1yqvJgf4>) showing people how to make homemade masks. Obviously, when resources are finite and there is no ability to go to the local safety supply and order thousands of masks, you have to improvise. And again, specifically the Los Angeles order points out that employees can supply their own. You also see terminology shifting from medical grade masks to face covering.

OSHA guidance says there are four classes of risks for COVID: very high, high, medium and low. We have employees in hospital environments taking temperatures around potential patients and actual patients. They have to have some type of face covering. Luckily with the healthcare institutions we work with, we were able to get those supplies through certain channels.

But if it comes to the point we can't, we'd have to improvise as best we could. I don't speak for OSHA or any state agency, but I would hope in that scenario that it would be viewed as it is—trying to make every good faith effort to supply that PPE.

SM: You mentioned the need for training employees on how to properly use PPE. But now is obviously not the time to conduct in-person, mass trainings. What advice do you have for employers?

Sorrells: Have good written policies and procedures and send out directives, with very limited interaction. For essential workers, there is some interaction happening day in and day out because we're still working, but limiting that interaction as we can.

Sending links to videos. Having that proper training as to when to wear it, how to wear it, through written procedures and virtual training—sending those out to some of the frontline supervision. Or going over that in a daily briefing, that this is the way we properly use and care for PPE.

SM: Are there any other areas of liability that employers should be concerned about related to PPE and essential employees?

Sorrells: One area that's come up is workman's compensation, which is a complicated entity unto itself. If an employee is on the job and he or she doesn't have the proper PPE—or even if they do—and they contract [COVID-19] based on their exposure at the worksite, I could certainly have a workman's compensation issue. That's really no different from other PPE.

The safety and well-being of your employees is the first and foremost priority, far and above any legal concerns. But the reason safety programs and PPE exist is we don't want employees to get injured—we care about their well-being.

The other factor is if they don't have proper PPE, whether that's eye protection, ear protection or masks, during COVID, then those hazards they may be exposed to may result in a workman's compensation claim.

SM: One other area of concern we've heard about are employers looking to hire new people to meet growing demands, especially at grocery stores and healthcare institutions. But based on state training requirements to conduct in-person training, they are not able to onboard people to meet the demand.

Sorrells: From a very generic standpoint, because every state is different, a lot of states have taken action to extend licenses. If you're onboarding new employees who need to be licensed, that requirement can vary widely by state. Some states have what they call a temporary license where new employees can go to work under a temporary license.

But one of the issues, apart from training, is also background investigations. All of the fingerprinting locations in most states are shut down. No one is accepting fingerprints, so it's a double issue there.

Most states have had some flexibility on their requirements to allow people to be onboarded under certain conditions. We've experienced it ourselves, but most states are having emergency orders put out there. The demand is certainly going up, but there have also been reductions—especially in manufacturing and Class A buildings. If you had four security officers at a corporate headquarters that was closed, for example, there may now be just one officer there. It's been offset with some officers who have been furloughed from other places, we're able to adjust. But most states are addressing that through some type of emergency order.

On one side the rational is, this is an emergency. Let's open the floodgates and join together to get things done. But if I'm a governor or a chair of a board in a state, I also want to know that I'm not putting a security officer out in the public that's a convicted felon or a sex offender.

And is training more critical or less critical in this time? I would argue, in some cases, it's even more critical during this time. So, it's not as simple as saying, 'Everybody put on a uniform and go to work.' But at the same time, we've got jobs to do and we just quite frankly can't do business as usual. You can't just go get fingerprints. You don't want to put 40 people in a classroom in Florida to get their license.

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