



COVID-19 is spread from surface contact where droplets or secretions exist and/or through inhalation of airborne droplets suspended in close proximity to the person's breathing zone.

#### PERSON-TO-PERSON SPREAD OCCURS:

- Between people who are in close contact with one another (within about 6 feet).
- Via respiratory droplets produced when an infected person coughs or sneezes.
- When these droplets land in the mouths or noses of people who are nearby or are inhaled into the lungs.

COVID-19 virus is a new strain of the coronavirus. Current understanding about how COVID-19 spreads infection is largely based on what is known about similar coronaviruses. New information and realities will become better understood as COVID-19 spreads.

# Staffing Placements and Exposure to COVID-19

As placements in certain industries have temporarily ground to a halt and others are experiencing a slowdown, demand for workers in other areas is booming. Several of our clients are seeing a demand for workers to clean sites with known exposure to the coronavirus.

While these placements create unique exposure, they also afford the opportunity to offset areas of your business that are softening, while potentially establishing new client relationships for the future.

To address that demand, Lockton risk management experts have provided the following guidance to help your business assess, prepare, and protect against potential exposures to the coronavirus.

## Getting to yes means knowing:

- **WHAT** is the client asking your workers to do? What chemicals will be used? What personal protective equipment (PPE) will be provided? What are the terms of contract?
- **WHERE** will the work will be performed? Perform a job site evaluation.
- **HOW** will the work will be performed? Understand the orientation and training required.
- **WHO** will be a fit? As always, when recruiting and placing, consider any reason a candidate can't safely perform the job or might be at a higher risk of getting injured (e.g., elderly, preexisting respiratory issues or weakened immune system, etc.). See CDC guidelines for more details. Another example, if the job requires use of a respirator, is the candidate willing to shave their facial hair?

## Controls

Despite the risks, these placements can be made safely. Four of the major considerations we encourage you to make as you provide labor with known exposure to the coronavirus include:

1. **CONTRACTUAL RISK MANAGEMENT:** Insurance is one of the last protections against risk. So, negotiating a reasonable contract provides important protection.
  - A. Work from your standard contract, if possible.
  - B. Refer to ASA's model contract language. The guiding question is "Whose work is it?" While the staffing firm is responsible for sourcing talent and facilitating a good job match by communicating work expectations, the training and orientation is a shared responsibility, with the work site employer retaining responsibility for the work site, supervision and means and methods. Your client (or your client's client) should be directing the work, providing the necessary job site training and communicating the exposure to chemicals, etc. (which should not be overshadowed by concerns about exposure to the coronavirus).
  - C. Ideally, your insurance and indemnity obligations in the contract should be limited to payment of statutory workers' compensation benefits owed to your employee who sustains injuries arising out of the course of employment. However, clients will likely be looking for further protection.
    - i. **"Over-action":** If your employee alleges that your client's negligence contributed to their injuries (e.g., insufficient training by the client, or inadequate PPE), they could pursue a separate "over-action" liability claim against the client, in addition to workers' compensation benefits. If you've named your client as an "alternative employer," this becomes an employer's liability claim for you, and if you've agreed to indemnify your client for liability claims made against them by your employee, it could become a contractual liability claim under your GL policy.
    - ii. **Waiver of subrogation:** If possible, avoid agreeing to provide a waiver of subrogation so as to preserve your right to recover the cost of your workers' compensation injuries from a negligent client.
    - iii. **Additional insured status** under the general liability policy: We recommend you avoid agreeing to provide additional insured on your GL policy (or assuming pollution liability), as you're not a cleaning contractor. This would open you up to a GL claim made by your client's client which your client tenders to you because they're an additional insured on your policy.
  - D. As always, consult with your Lockton service team as respects contractual risk management issues.

2. **ENGINEERING CONTROLS:** Involve controlling the circumstances to reduce the exposure without relying on worker behavior. As is normally the case, in this area, you're unlikely to influence your client (or client's client) to make changes.
3. **ADMINISTRATIVE CONTROLS:** Require action from the employer or worker, and include changing procedures, instituting new protocols, etc. Safe work practices reduce the likelihood, duration or frequency of exposure, for example personal hygiene, cleaning protocols and reporting exposure concerns.
4. **PERSONAL PROTECTIVE EQUIPMENT (PPE):** The contract should stipulate the staffing firm client assumes responsibility and indemnification claims arising out of allegations regarding failure to provide appropriate PPE (such as gloves, goggles, face shields, face masks, and perhaps respiratory protection), as well as training your employees on their appropriate use and recognition of the exposure. This is an important consideration with supplies being limited.

Be prepared to consider how you'll respond if your potential client refuses to provide PPE. It may be worth eating the cost, but you'll need to know what's required so you can include it in your bill rate. Bottom line, if you wouldn't send your child to the job, don't send a candidate.



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## IMPORTANT RESOURCES

- Lockton's Coronavirus Advisory Practice: <https://www.lockton.com/coronavirus>
- Check state and local websites.
- Centers for Disease Control: <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
- CDC fact sheet: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>
- World Health Organization: <https://www.who.int/>
- Worldmeters: <https://www.worldometers.info/coronavirus/>



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