

JUNE 19, 2020 | MINE SAFETY & HEALTH (MSHA)

With Pressure Mounting on MSHA for COVID-19 Standard, Agency Issues Guidance with CDC

By [Conn Maciel Carey's COVID-19 Task Force](#)

MSHA is facing political and now legal pressure to take additional action in response to the COVID-19 pandemic. For the most part, and most certainly when compared to its sister agency OSHA, MSHA has taken a wait and see approach to responding to COVID-19 in the workplace, offering limited guidance and resources to the mining community.

While there were some developments in late March and early April, granting mine operators a bit of relief on training requirements during social distancing, while the President's national emergency declaration remains in effect, MSHA has otherwise encouraged mine operators to implement their own best practices to combat the spread of COVID-19 in the workplace and adhere to Centers for Disease Control and Prevention (CDC) guidance.



In May, a group of senators, led by Senator Manchin of West Virginia, introduced a bill that if passed would force MSHA's hand to enact a *emergency temporary standard* with respect to COVID-19. No further action has taken place since the bill was introduced on May 13, 2020, but if passed, the [**COVID-19 Mine Worker Protection Act**](#) would require MSHA to issue an *emergency temporary standard* within

seven days with respect to COVID-19 and require MSHA to prepare a *"permanent and comprehensive infectious disease standard within two years."* In addition, the bill would require:

- Mine operators to provide personal protective equipment to miners;
- MSHA to forbid employers from retaliating against miners for reporting infection control problems to their employer, or to local, State, or Federal government agencies; and
- MSHA, in coordination with CDC and NIOSH, to track, analyze, and investigate mine-related COVID-19 infections data to make recommendations and guidance to protect miners from the virus.

Currently, MSHA does not require mine operators to report information regarding the number of suspected or confirmed COVID-19 illnesses in a mine operators' workforce. However, the agency does encourage operators to submit any such data to MSHA, along with information regarding changes in operations, shifts, and/or employee counts at a mine to assist with the allocation of MSHA enforcement resources.

Now, this week, a petition from two labor unions was filed in the U.S. Appeals Court for the District of Columbia seeking to force MSHA to enact an *emergency temporary standard* with respect to COVID-19. The [United Mine Workers Union \(UMWA\) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers union jointly filed the appeal](#), after the UMWA petitioned MSHA several times informally, attempting to prompt the agency to promulgate an emergency standard. It is worth noting a similar, but not identical, petition was submitted to and ultimately denied by the D.C. Circuit by the AFL-CIO, likewise seeking to force OSHA to adopt an infectious disease standard.

Thus far, MSHA continues to promote CDC guidance and best practices for the mining industry without a publicized intent to implement an enforceable standard for COVID-19 and/or infectious diseases. In what would appear to be support of this position, MSHA recently partnered with the CDC to release several resources for the mining industry for protecting miners against COVID-19. The [COVID-19 and Mining](#) and [COVID-19 and Miners with Serious Underlying Medical Conditions](#) offer guidance and best practices for mine operators to implement and miners to consider. These have been to be added to [MSHA's existing COVID-19 resources](#). 

While we await MSHA's responses to the labor unions' petition – and eventual D.C. Circuit ruling – the [COVID-19 Mine Worker Protection Act](#) remains before the Senate and the compliance obligations of miner operators remain the same. However, those obligations could change drastically if either party pushing for an enforceable regulation succeeds and MSHA is required to implement an *emergency temporary standard*.

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We will continue to monitor MSHA's guidance on how its regulations apply to the coronavirus pandemic, and we

will provide additional updates on these evolving issues. In the meantime, for additional resources on issues related to COVID-19, please visit Conn Maciel Carey's [COVID-19 Resource Page](#) for an [extensive index of frequently asked questions](#) with our answers about HR, employment law, and OSHA regulatory related developments and guidance, as well as COVID-19 recordkeeping and reporting flow charts.



Likewise, subscribe to our [Employer Defense Report](#) blog and [MSHA Defense Report](#) blog for regular updates about the Labor and Employment Law or MSHA implications of COVID-19 in the workplace. Conn Maciel Carey's COVID-19 Task Force is monitoring federal, state, and local developments closely and is continuously updating these blogs and the FAQ page with the latest news and resources for employers.