

COVID-19 Updates of Relevance to the Food Industry

May 4, 2020

Food, Drugs, and Devices

Since Covington's last [client alert](#) on developments for the food industry during the COVID-19 public health crisis, the Occupational Safety and Health Administration ("OSHA") and the Centers for Disease Control and Prevention ("CDC") have posted a number of updates of interest to the industry. Additionally, President Trump has issued an Executive Order concerning beef, pork, and poultry ("meat and poultry") processors.

- On April 26, OSHA and CDC issued [interim guidance](#) for meat and poultry processing workers and employers. The guidance is intended to supplement, but not replace general COVID-19 information issued by [OSHA](#) and [CDC](#), as well as [interim guidance](#) issued by CDC on implementing safety practices for critical infrastructure workers who may have had exposure to a person with suspected or confirmed COVID-19. The joint interim guidance includes information about:
 - Distinctive factors that affect workers' risk for exposure to COVID-19 in meat and poultry processing facilities;
 - Appropriate engineering, administrative, and work practice controls;
 - Cleaning and disinfection protocols;
 - Screening and monitoring workers;
 - Managing sick workers;
 - Addressing return to work;
 - Using personal protective equipment; and
 - Protecting workers' rights.

The guidance encourages employers to configure facilities so as to ensure that workers are spaced at least six feet apart, and recommends the use of physical partitions where feasible. According to the guidance, employers ideally should align workstations such that workers do not face one another.

- On April 28, President Trump issued an [Executive Order](#) invoking the Defense Production Act ("DPA") to classify meat and poultry processing facilities as critical infrastructure. The Executive Order instructs the Secretary of Agriculture to "take all appropriate action . . . to ensure that meat and poultry processors continue operations consistent with the guidance for their operations jointly issued by the CDC and OSHA."

- On April 28, the U.S. Department of Labor issued a [statement](#) from OSHA Solicitor of Labor Kate O'Scannlain and Principal Deputy Assistant Secretary Loren Sweatt stating that the agency will use enforcement discretion for employers adhering to the joint interim guidance, and that it “will take into account good faith attempts” to follow the guidance. Additionally, the Labor Department indicated that it might intervene in litigation concerning compliance with OSHA standards and guidance: “Where a meat, pork, or poultry processing employer operating pursuant to the President’s invocation of the DPA has demonstrated good faith attempts to comply with the Joint Meat Processing Guidance and is sued for alleged workplace exposures, the Department of Labor will consider a request to participate in that litigation in support of the employer’s compliance program. Likewise, the Department of Labor will consider similar requests by workers if their employer has not taken steps in good faith to follow the Joint Meat Processing Guidance.”
- On May 1, CDC released a [report](#) on COVID-19 cases among workers in 115 meat and poultry processing facilities across 19 states. The report states that, among approximately 130,000 workers, 4,913 have been diagnosed with COVID-19. 20 COVID-19 related deaths have been reported.
- On May 1, OSHA issued a [safety alert](#) with recommendations for restaurants and food and beverage businesses providing curbside pickup and takeout service. Recommendations include avoiding direct handoff, when possible; maintaining six feet between co-workers and customers; marking six-foot distances with floor tape in pickup lines; temporarily moving workstations to create more distance and installing partitions, if feasible; and encouraging workers to report any safety and health concerns.

Covington continues to advise the food industry extensively on issues relating to the COVID-19 crisis, and will continue to provide updates to our clients and contacts.

As the legal, regulatory, and commercial implications of coronavirus COVID-19 continue to evolve, our lawyers and advisors are helping clients navigate the complex considerations that companies around the world are facing and develop plans and strategies in response to COVID-19. Reach out to our COVID-19 task force COVID19@cov.com and visit our [COVID-19 Legal and Business Toolkit](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food, Drugs, and Devices practice:

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**Beth Braiterman has not yet been admitted to the DC bar and is supervised by principals of the firm.*

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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