



# COVID-19 HARVEST PROTOCOLS WEBINAR | JULY 7, 2020



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PRESENTERS: COLLIN COOK - FISHER & PHILLIPS LLP  
MANESH RATH & DAVID SARVADI - KELLER & HECKMAN LLP

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## DISCLAIMER:

This PowerPoint was presented on July 7, 2020. Information contained in this PowerPoint is relevant to that date. Please keep in mind that our intent is to offer general subject matter information to the wine industry, and it should be taken as general identification of issues. If you have questions regarding your organization's specific circumstances, we recommend that you contact counsel or subject matter experts directly.



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Presenters:

## **Collin D. Cook**

Fisher & Phillips LLP

Partner, San Francisco & Irvine

Workplace Safety Practice Group

- Counsels employers on workplace safety issues, ranging from recordkeeping, revising and integrating safety and health policies, conducting safety compliance audits and providing training on safety and health issues.
- Defends employers against Cal/OSHA enforcement actions from workplace inspections through the appeal of citations issued for safety violations.



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# DAVID G. SARVADI

Mr. Sarvadi practices in the areas of occupational health and safety, toxic substance management, pesticide regulation, and product safety.

Mr. Sarvadi represents clients before a variety of federal and state enforcement agencies in legal proceedings involving OSHA citations, EPA Notice of Violations, TSCA consent orders, CPSC Notices, FIFRA Stop Sale Use and Removal Orders, and EEOC Charges of Discrimination. He works with clients in developing, reviewing, and auditing compliance programs in all of these areas, and in obtaining agency rulings on proposed or novel activities and questions, seeking interpretations of regulations as they apply to specific sets of facts. He has been counsel to the National Coalition on Ergonomics from its inception.

He has a background in occupational safety and health, having worked as an industrial hygienist for more than 15 years and became a Certified Industrial Hygienist in 1978, a designation he held until he voluntarily relinquished it in 2010. Prior to becoming an attorney, he managed a corporate industrial hygiene program for a Fortune 500 company. Mr. Sarvadi was selected by the National Academy of Sciences to participate in a panel of the Institute of Medicine that was asked to review a NIOSH study on the use of respirators. He was asked to participate because of his expertise in law and industrial hygiene.





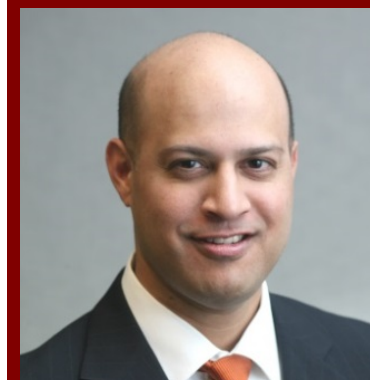
# MANESH K. RATH

Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016, 2017 and 2018; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



**Manesh Rath**

Partner

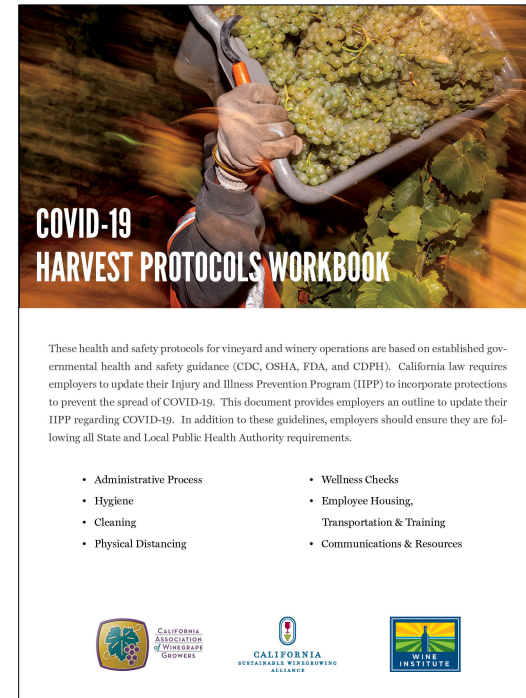
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Topics Include:

- Administrative Process
- Hygiene
- Cleaning & Sanitization
- Physical Distancing
- Wellness Screening
- Employee Transportation, Housing & Training
- Communication & Resources





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## ADMINISTRATIVE PROCESS:

- Review and update your Injury and Illness Prevention Program (IIPP), in print and in practice, to reflect state and local guidance, guidelines, and orders.
- Confirm that appropriate supervisory level employees understand their responsibilities for implementation of the IIPP and job site compliance and conduct refresher training.
- Work closely with HR professionals and legal counsel to develop workplace safety practices that follow current laws and workplace safety regulations.
- Coordinate with state and local health officials to obtain timely and accurate information to inform appropriate responses and stay compliant.

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## ADMINISTRATIVE PROCESS:

- Establish a plan to respond to suspected and confirmed cases of infection based on guidance from state and local health officials, as well as public health organizations (CDC).
- Adhere to state and local requirements regarding recording and reporting of positive COVID-19 cases.
  - California employers that are required to record work-related fatalities, injuries and illnesses must record a work-related COVID-19 fatality or illness like any other occupational illness.



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## ADMINISTRATIVE PROCESS:

- To be recordable, an illness must be work-related and result in one of the following:
  - Death.
  - Days away from work.
  - Restricted work or transfer to another job.
  - Medical treatment beyond first aid.
  - Loss of consciousness.
  - A significant injury or illness diagnosed by a physician or other licensed health care professional.
- If a work-related COVID-19 case meets one of these criteria, then covered employers in California must record the case on their 300, 300A and 301 or equivalent forms

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## ADMINISTRATIVE PROCESS:

- Does a COVID-19 case have to be confirmed to be recordable?
  - A positive COVID-19 test should be recorded.
  - There may be other situations where an employer must make a recordability determination.
  - Cal-OSHA recommends erring on the side of recordability.
- How does an employer determine if a COVID-19 case is work-related for recordkeeping purposes?
  - Considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition, or significantly aggravated a pre-existing injury or illness.
    - Includes interaction with people known to be infected
    - Working in the same area where people known to have been carrying COVID-19 have been
    - Sharing tools, materials or vehicles with persons known to have been carrying COVID-19



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## ADMINISTRATIVE PROCESS:

- Maintain Confidentiality and Protect Employee Privacy
  - Except for circumstances where the Employer is legally required to report workplace occurrences of communicable disease, and/or the individual provides a written authorization to disclose his or her diagnosis, the confidentiality of all medical conditions should be maintained in accordance with applicable law.
  - When required, the number of persons who will be informed that an unnamed employee has tested positive should be kept to the minimum needed to comply with reporting requirements.

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## HYGIENE:

### **Employees:**

Personal Hygiene is key

- Hand-washing
- Face covers
  - Consider eye and hand protection

### **Employers:**

- Provision of handwashing facility or hand-sanitizer
  - Communication of expectations, encourage frequent use
  - Monitor compliance
  - Providing time – scheduled breaks
- Arrange work to keep employees apart

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## CLEANING & SANITIZATION:

- Sanitizing surfaces regularly
  - Work tables
  - Bathrooms
  - Vehicles
  - Doors
  - Shared tools and equipment
- Minimize sharing
  - Provide tools for each worker
  - Consider individual water bottles vs. communal jugs
    - Provide sanitizer
- Use of EPA approved products – List N
  - Use in accordance with manufacturer instructions

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## PHYSICAL DISTANCING:

- Maintaining physical distancing of at least six feet is critical to limiting the spread of COVID-19.
- Employers should monitor employees for compliance with appropriate physical distancing practices to limit the spread of COVID-19.
- Strategies include but are not limited to:
  - Using signs, tape marks, or other visual cues placed 6 feet apart to indicate where to stand in areas where congregation is likely to occur
    - Clocking in/out, safety trainings
    - Picking up equipment, sorting and destemming activity
    - Rest and meal breaks, etc.

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## PHYSICAL DISTANCING:

- Assigning workers to specific rows or blocks
- Staggering start times in alternating rows for pickers in order to achieve appropriate distancing.
- Providing adequate shade to allow for social distancing.
- Reminding employees to refrain from customary social greetings (i.e., handshakes, hugs, and fist or elbow bumps)
- Provide adequate time and space for employees to clock in and out at the beginning and end of the shift to prevent crowding.



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## PHYSICAL DISTANCING:

- Limiting the number of employees in confined areas for meetings and trainings to allow for proper social distancing.
- Staggering work, rest breaks and lunch times, if possible, to allow for 6-foot distance between employees.
- Consider establishing stable and consistent groups or cohorts of employees to reduce potential exposure.
- Designating key areas (e.g., restrooms and rest area) for third party service providers (e.g., truck drivers) to segregate themselves from other employees and providing hand washing facilities and/or hand sanitizer.
- Consider leasing additional equipment for sorting and destemming in order to increase worker physical distancing.

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## WELLNESS SCREENING:

- Separating employees who are:
  - Sick or appear sick
  - Report symptoms
  - Elevated temperature
- CDC Symptoms:
  - Fatigue
  - Cough, shortness of breath, difficulty breathing
  - Fever, elevated temperature
  - Muscle pain, overall body aches
  - Loss of smell or taste
  - Runny nose, congestion, sore throat
  - Nausea or vomiting, diarrhea
- Screening:
  - When employee arrives at work, or
  - Before employee departs for work
- Data Privacy
- Ability to return to duty based on symptoms or testing

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## EMPLOYEE -TRANSPORTATION:

- Who:
  - Provides employer transportation
  - Set standards for carpooling
- Spacing between seating
- May need to require face coverings
- Increased air flow – open windows
- Sanitizing commonly touched surfaces
- Assigned seating for better tracing – pictures?

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## EMPLOYEE - HOUSING:

- Identify housing types
  - Employee-sourced
  - Employer-provided
  - Staffing agency provided housing
- Communicate expectations regarding distancing, use of face covering
- Establish a company point-of-contact for questions, requests
- Confirm frequent sanitization practices
- Confirm provision of adequate soap, water, hand sanitizer
- Investigate possible additional housing spaces to increase spacing
- Consider work groups that remain together
  - Reducing number of exposures
  - Keeping some groups intact, ready to work

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## EMPLOYEE TRAINING:

- Employers should create specific training modules to inform and educate employees of new protocols to reduce the risk of spread of COVID-19.
- Employers should be aware of, and adhere to, state and local orders restricting the size of groups when conducting employee trainings.
- Training should occur in the language used by employees and documents should be provided employees' native language.



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## EMPLOYEE TRAINING:

- Employer training topics include:
  - Self-identifying COVID-19 symptoms and when employees should seek medical help
  - How COVID-19 is spread
  - How to comply with the employer's plan for screening employees
  - How employees can protect themselves and prevent the spread of COVID-19
  - Proper handwashing techniques

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## EMPLOYEE TRAINING:

- How to properly use face coverings and when they are required
- Proper coughing and sneezing techniques and etiquette
- Avoid touching eyes, nose, and mouth with unwashed hands
- Safe use of cleaners and disinfectants
- Proper social distancing
- Avoiding sharing personal items with co-workers (dishes, cups, utensils, towels)

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## EMPLOYEE TRAINING:

- The importance of not coming to work if they have COVID-19 symptoms, or if they live with or have had close contact with someone who does (or recommend daily self-screenings if they have had close contact with an infected individual).
- Discussing the employer's plan and procedures to protect employees from COVID-19.
- Promptly reporting to a supervisor when an employee begins to feel symptoms.
- Discouraging employees from large gatherings and encouraging maintaining physical distancing during non-work hours.

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## COMMUNICATION:

- Communicate policies and procedures
- Provide key employer contact information for employees
- Provide employees with written copy of employer's harvest safety procedures
- Periodic safety meetings prior to shift start
- Communications should be understandable by workers

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## RESOURCES:

- [Cal OSHA COVID-19 Guidance Documents](#)
- [OSHA COVID-19 Guidance Documents](#)
- [CDC Recommendations for Businesses and Workplaces](#)
- [CDC Recommendations for Agricultural Employers](#)
- [CDPH Guidance Documents](#)



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