



STEPHEN E. SANDHERR, Chief Executive Officer

April 30, 2020

Mr. Sean McGarvey
President
North America's Building Trades Unions
815 16th Street, NW
Washington, DC 20006

RE: NABTU COVID-19 Standards for U.S. Construction Sites

Dear Sean:

Thank you for sharing a copy of NABTU's safety standards for COVID-19. You and the leaders of the building trades should be commended for offering a thoughtful and comprehensive approach to protecting workers and the public from exposure to the COVID-19 virus. As we both recognize, construction workers must feel confident that appropriate and meaningful measures are taken to maintain safe conditions before the industry can approach being fully operational. Additionally, for those projects that have been able to continue, their operation depends on the ability of the contractor and the workers to demonstrate to the public and public officials that they are following recommended safety protocols.

At the outset of the pandemic, AGC and NABTU issued a joint press statement advocating for continued construction activity contingent upon the implementation of additional safety measures. We believe that joint statement generated the support for federal, state, and local officials to, in the main, permit construction activity to continue. Relying on guidance from the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC), and experienced safety professionals, AGC devised a COVID-19 safety tool kit that we made available to the entire industry. We have encouraged continued education and communication to make sure that the additional measures of social distancing, use of personal protective equipment (PPE), and increased personal hygiene are reinforced and enforced. AGC also conducted a National Safety Stand Down two weeks ago to further spread the message.

It is important – and critical – to note that our guidance closely mirrors the standards set forth in your document. With the recognition that our collective organizations share a commitment to ensuring a safe and healthy environment for the men and women who work on jobsites, I accept your invitation to provide comments on your document.

Screen Employees with Thermometers

AGC agrees, and has recommended, that employers ask workers whether they are exhibiting symptoms of the virus before letting them enter the jobsite. We are, however, concerned that requiring employers to check worker's temperatures, even with no-contact thermometers, would create problems. The process would require workers to congregate, making it difficult and in some cases impossible to maintain social distancing. It would further strain the supply of masks. And it would require employers to perform what may seem a simple task but amounts to a medical procedure, inviting trial lawyers to sue any employer that failed to meet the high professional standards set for doctors, nurses and the like.

Moreover, as Christine Trahan Cain of CPWR mentioned during our recent conference call, conducting temperature monitoring does nothing to guard against asymptomatic carriers of the virus from infecting the jobsite. While the exercise of temperature monitoring may offer some employees additional piece of mind, it will not increase their protection and, as discussed above, may actually increase risk of exposure.

Modify Work Schedules to Ensure Social Distancing

The recommendations contained in AGC's COVID-19 tool kit also suggest that employers stagger work schedules, breaks and meal-times. The NABTU guidance similarly suggests modifying work schedules "to stagger work, provide alternating workdays or extra shifts to reduce the total number of employees on a job site at any given time to ensure physical distancing." It further states that the "recommendation for shifting individual employees should be at the sole discretion of the Local Business Manager or their representative." AGC points out that the assignment and scheduling of individual employees' work has always been a management right, provided such right is exercised in conformance with the terms of the collective bargaining agreement. In these unusual and challenging times, AGC would support a recommendation that employers consult with local business managers or their representatives over such decisions, but it would be impractical and inappropriate for employers to yield discretion when they still bear responsibility for employee safety, project timeliness, legal compliance, contractual obligations, and more.

Required Use of Respirators

In accordance with recent guidance issued by the CDC and OSHA, AGC recognizes that requiring workers to cover their mouths and noses will help with preventing the spread of COVID-19. Both agencies have recommended face coverings and/or face masks and not necessarily respiratory protection when social distancing cannot be achieved. It is our concern that the requirement, or mandate, to use respiratory protection will significantly increase the number of contractors who will be required to implement and maintain a written respiratory protection program as nearly every construction worker will, at some point, be required to work within six feet of a coworker to complete an assigned task.

Based on our review of the OSHA Guidance for Preparing Workplaces for COVID-19, which was prepared in partnership with the Department of Health and Human Services, construction would be considered low risk for most operations/tasks. According to the guidance, additional PPE is not recommended for workers in the low exposure risk group. It advises that workers in low risk occupations should continue to use the PPE, if any, that they would ordinarily use for other job tasks. And while some operations/tasks may fall into the medium risk category, the recommended PPE for this category does not specifically state respiratory protection must be worn. In fact, the OSHA guidance states that only in rare situations would workers in this risk category be required to use respirators. It is our belief that this level of protection is unnecessary, and that contractors allowing the use of some form of face covering or face mask will provide adequate protection to affected workers.

Conclusion

COVID-19 presents the industry with unprecedented challenges. Recognizing that we share a common goal of protecting the safety and health of construction workers, I hope we can find common ground to do so in a manner that relies on sound science and does not expose employers to unnecessary liability.

Sincerely,



Stephen E. Sandherr