

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Oakland District Office
1515 Clay Street, Suite 1303
Oakland, CA 94612
Phone: (510) 622-2916 Fax: (510) 622-2908

Inspection #: 1475159
Inspection Dates: 05/13/2020 - 11/10/2020
Issuance Date: 11/10/2020
CSHO ID: N3190
Optional Report #: 024-20



Citation and Notification of Penalty

Company Name: Driftwood Hayward Operating Company, LP
Establishment DBA: Driftwood Healthcare Center - Hayward
and its successors
Inspection Site: 19700 Hesperian Boulevard
Hayward, CA 94541

Citation 1 Item 1 Type of Violation: **Regulatory**

Title 8 CCR Section 342(a)

Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment. The report shall be made by the telephone or through a specified online mechanism established by the Division for this purpose. Until the division has made such a mechanism available, the report may be made by telephone or email.

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.
Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code. {Ref Title 8 Section 330(h) Serious injury or illness means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by an accident on a public street or highway, unless the accident occurred in a construction zone.}

Alleged Violation Description:

Employer failed to immediately report to the Division the serious illness suffered by an employee who was hospitalized due to COVID-19, contracted as a result of their employment, on or about April 19th, 2020.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$5000.00**

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 Hayward, CA 94541

Citation 1 Item 2 Type of Violation: **General**

Title 8 CCR Section 5199(c)(1). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(1) The administrator shall also identify in writing the job categories in which employees have occupational exposure to ATDs. The infection control procedures shall include procedures for the cleaning and disinfection of work areas, vehicles, and equipment that may become contaminated with ATPs and pose an infection risk to employees.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020 the employer failed to identify, in writing, the job categories in which employees have occupational exposure to aerosol transmissible diseases.

Date By Which Violation Must be Abated:	December 01, 2020
Proposed Penalty:	\$935.00

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Citation 1 Item 3 Type of Violation: **General**

Title 8 CCR Section 5199(c)(2). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(2) The employer shall establish, implement, and maintain effective written source control procedures. For fixed health care and correctional facilities, and in other facilities, services, and operations to the extent reasonably practicable, these procedures shall incorporate the recommendations contained in the Respiratory Hygiene/Cough Etiquette in Health Care Settings. These procedures shall include the method of informing persons with whom employees will have contact of the employer's source control measures.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020 the employer failed to establish, implement, and/or maintain written source control procedures (e.g. within its COVID-19 Mitigation Plan and Addendum for Infection Prevention and Control Manual) for aerosol transmissible diseases for its facility and operations, in the following ways:

Instance 1: The employer did not implement written source control procedures incorporating the recommendations contained in the Respiratory Hygiene/Cough Etiquette in Health Care Settings, including Masking and Separation of Persons with Respiratory Symptoms.

Instance 2: The employers written source control procedures did not include the method of informing persons with whom employees will have contact of the employers source control measures.

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Citation 1 Item 4 Type of Violation: **General**

Title 8 CCR Section 5199(c)(3). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(3) The employer shall establish, implement, and maintain effective written procedures for the screening and referral of cases and suspected cases of AirIDs to appropriate facilities.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020 the employer failed to establish, implement, and maintain written procedures (e.g. in its COVID-19 Mitigation Plan) for the screening and referral of cases and suspected cases of airborne infectious diseases (AirIDs) to appropriate facilities.

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Citation 1 Item 5 Type of Violation: **General**

Title 8 CCR Section 5199(c)(4). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(4) The employer shall establish, implement, and maintain effective written procedures to communicate with employees, other employers, and the local health officer regarding the suspected or diagnosed infectious disease status of referred patients. These shall include procedures to receive information from the facility to which patients were referred and to provide necessary infection control information to employees who were exposed to the referred person.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020 the employer failed to establish, implement, and maintain written procedures (e.g. as part of its COVID-19 Mitigation Plan) to communicate with employees, other employers, and the local health officer regarding the suspected or diagnosed infectious disease status of referred patients.

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Citation 1 Item 6 Type of Violation: **General**

Title 8 CCR Section 5199(c)(6)(B) Aerosol Transmissible Disease

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(6) The employer shall establish a system of medical services for employees which meets the following requirements:

(B) The employer shall develop, implement, and maintain effective written procedures for exposure incidents in accordance with subsections (h)(6) through (h)(9).

[Reference T8 CCR Section 5199(h)(6) through (h)(9):

(6) Exposure Incidents.

(A) A health care provider, or the employer of a health care provider who determines that a person is an RATD case or suspected case shall report, or ensure that the health care provider reports, the case to the local health officer, in accordance with Title 17.

(B) In addition to the report required in subsection (h)(6)(A), the employer in the facility, service or operation that originates the report shall determine, to the extent that the information is available in the employer's records, whether the employee(s) of any other employer(s) may have had contact with the case or suspected case while performing activities within the scope of this section. The employer shall notify the other employer(s) within a timeframe that will both provide reasonable assurance that there will be adequate time for the employee to receive effective medical intervention to prevent disease or mitigate the disease course, and will also permit the prompt initiation of an investigation to identify exposed employees. In no case, shall the notification be longer than 72 hours after the report to the local health officer. The notification shall include the date, time, and nature of the potential exposure, and provide any other information that is necessary for the other employer(s) to evaluate the potential exposure of his or her employees. The notifying employer shall not provide the identity of the source patient to the other employers.

(C) Each employer who becomes aware that his or her employees may have been exposed to an RATD case or suspected case, or to an exposure incident involving an ATP-L shall do all of the following:

1. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours following, as applicable, the employer's report to the local health officer or the receipt of notification from another employer or the local health officer, conduct an analysis of the exposure scenario to determine which employees had significant exposures. This analysis shall be conducted by an individual knowledgeable in the mechanisms of exposure to ATPs or ATPs-L, and shall record the names and any other employee identifier used in the workplace of persons who were included in the analysis. The analysis shall also record the basis for any determination that an employee need not be included in post-exposure follow-up because the employee did not have a significant exposure or because a PLHCP determined that the employee is immune to the infection in accordance with applicable public health guidelines. The exposure analysis shall be made available to the local health officer upon request. The name of the person making the determination, and the identity of any PLHCP or local health officer consulted in making the determination shall be recorded.

2. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 96 hours of becoming aware of the potential exposure, notify employees who had significant exposures of the date, time, and nature of the exposure.

3. As soon as feasible, provide post-exposure medical evaluation to all employees who had a significant exposure. The evaluation shall be conducted by a PLHCP knowledgeable about the specific disease, including appropriate vaccination, prophylaxis and treatment. For *M. tuberculosis*, and for other pathogens where recommended by applicable public health guidelines, this shall include testing of the isolate from the source individual or material for drug susceptibility, unless the PLHCP determines that it is not feasible.

4. Obtain from the PLHCP a recommendation regarding precautionary removal in accordance with subsection (h)(8), and a written opinion in accordance with subsection (h)(9).

5. Determine, to the extent that the information is available in the employer's records, whether employees of any other employers may have been exposed to the case or material. The employer shall notify these other employers within a time frame that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours of becoming aware of the exposure incident of the nature, date, and time of the exposure, and shall provide the contact information for the diagnosing PLHCP. The notifying employer shall not provide the identity of the source patient to other employers.

(7) Information provided to the Physician or Other Licensed Health Care Professional.

(A) Each employer shall ensure that all PLHCPs responsible for making determinations and performing procedures as part of the medical services program are provided a copy of this standard and applicable public health guidelines. For respirator medical evaluations, the employer shall provide information regarding the type of respiratory protection used, a description of the work effort required, any special environmental conditions that exist (e.g., heat, confined space entry), additional requirements for protective clothing and equipment, and the duration and frequency of respirator use.

(B) Each employer shall ensure that the PLHCP who evaluates an employee after an exposure incident is provided the following information:

1. A description of the exposed employee's duties as they relate to the exposure incident;
2. The circumstances under which the exposure incident occurred;
3. Any available diagnostic test results, including drug susceptibility pattern or other information relating to the source of exposure that could assist in the medical management of the employee; and
4. All of the employer's medical records for the employee that are relevant to the management of the employee, including tuberculin skin test results and other relevant tests for ATP infections, vaccination status, and determinations of immunity.

(8) Precautionary removal recommendation from the physician or other licensed health care professional.

(A) Each employer who provides a post-exposure evaluation in accordance with this Section, or an evaluation of an employee's TB conversion in accordance with subsection (h)(3) shall request from the PLHCP an opinion regarding whether precautionary removal from the employee's regular assignment is necessary to prevent spread of the disease agent by the employee and what type of alternate work assignment may be provided. The employer shall request that the PLHCP convey to the employer any recommendation for precautionary removal immediately via phone or fax and that the PLHCP document the recommendation in the written opinion as required in subsection (h)(9).

(B) Where the PLHCP recommends precautionary removal, or where the local health officer recommends precautionary removal, the employer shall maintain until the employee is determined to be noninfectious, the employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to his or her former job status, as if the employee had not been removed from his or her job or otherwise medically limited.

Alleged Violation Description:

Prior to and during the course of the inspection, including but limited to, on May 13th, 2020, the employer failed to develop, implement, and/or maintain effective written procedures (e.g. as part of its COVID-19 Mitigation Plan) for employee exposure incidents in accordance with T8 CCR Section 5199 subsections (h)(6) through (h)(9) in the following ways:

Instance 1: Where the PLHCP recommended precautionary removal, or where the local health officer recommended precautionary removal, the employer failed to maintain, until the employee was determined to be noninfectious, the employee's earnings, seniority, and all other employee rights and benefits, as if the employee had not been removed from his or her job or otherwise medically limited. [Ref. T8 CCR 5199(h)(8)(B)]

Instance 2: The employer failed to develop, implement, and/or maintain effective written procedures for investigating exposure incidents; notifying employees with significant exposure, other employers of employees with significant exposure, and/or the local health officer; providing post-exposure and/or prophylaxis as necessary to employees with significant exposure; and/or, for obtaining from a PLHCP a recommendation regarding precautionary removal in accordance with subsection (h)(8), and a written opinion in accordance with subsection (h)(9). {Reference Title 8 CCR Section 5199(h)(6)(C)}

Date By Which Violation Must be Abated:

December 01, 2020

Proposed Penalty:

\$935.00

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Citation 1 Item 7 Type of Violation: **General**

Title 8 CCR Section 5199(c)(8). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(8) The employer shall ensure that the infection control procedures are reviewed at least annually by the administrator and by employees regarding the effectiveness of the program in their respective work areas, and that deficiencies found are corrected.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020, the employer failed to ensure that infection control procedures outlined in its COVID-19 Mitigation Plan, Emergency Operations Program and Plan, Infection Control Program, and/or Addendum for Infection Prevention and Control Manual were reviewed at least annually by the administrator and by employees regarding the effectiveness of the program.

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Proposed Penalty: \$935.00

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Citation 2 Item 1 Type of Violation: **Serious Accident Related**

Title 8 CCR Section 5199(c)(5). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(5) The employer shall establish, implement and maintain effective written procedures to reduce the risk of transmission of aerosol transmissible disease, to the extent feasible, during the period the person requiring referral is in the facility or is in contact with employees. In addition to source control measures, these procedures shall include, to the extent feasible:

- (A) placement of the person requiring referral in a separate room or area;
- (B) provision of separate ventilation or filtration in the room or area; and
- (C) employee use of respiratory protection when entering the room or area in which the person requiring referral is located, if that person is not compliant with source control measures. Respirator use shall meet the requirements of subsection (g) and Section 5144, Respiratory Protection, of these orders.

Alleged Violation Description:

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020, the employer failed to implement written procedures to reduce the risk of transmission of aerosol transmissible disease, to the extent feasible, during the period that suspect and/or confirmed COVID-19 cases were in the facility or were in contact with employees.

Instance 1:

The employer failed to ensure that all confirmed or suspected cases of COVID-19 were placed in a separate room or area. [Ref. T8 CCR Section 5199(c)(5)(A)]

Instance 2:

The employer failed to provide separate ventilation or filtration for all confirmed or suspected cases of COVID-19. [Ref. T8 CCR Section 5199(c)(5)(B)]

Instance 3:

The employer failed to provide respirators during the time period of approximately April 8, 2020 to April 12, 2020 to at least one employee when required to enter a room(s) or area(s) in which a person, or persons, with suspected or confirmed COVID-19 were located. As a result, an employee tested positive and was hospitalized on, or about, April 19, 2020. [Ref. T8 CCR Section 5199(c)(5)(C)]

Instance 4:

The employer failed to provide medical evaluations to determine employee ability to use a respirator before the employees were required to use the respirator while caring for or exposed to suspect and confirmed COVID-19 patients. [Ref. T8 CCR Section 5199(g)(5)]

Instance 5:

The employer failed to ensure that all employees required to use a filtering facepiece respirator, while caring for or exposed to suspect and confirmed COVID-19 patients, were fit tested prior to their initial use of the respirator. [Ref. T8 CCR Section 5199(g)(6)(B)]

Date By Which Violation Must be Abated:

December 01, 2020

Proposed Penalty:

\$25000.00

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Citation 3 Item 1 Type of Violation: **Serious**

Title 8 CCR Section 5199(c)(7) Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(7) Employers shall ensure that all employees with occupational exposure participate in a training program. Training shall be provided at the time of initial assignment to tasks where occupational exposure may take place and at least annually thereafter. Additional training shall be provided when there are changes in the workplace or when there are changes in procedures that could affect worker exposure to ATPs. The person conducting the training shall be knowledgeable in the subject matter covered by the training program as it relates to the workplace. Training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used. This training shall include:

- (A) A general explanation of ATDs including the signs and symptoms that require further medical evaluation;
- (B) Screening methods and criteria for persons who require referral;
- (C) The employer's source control measures and how these measures will be communicated to persons the employees contact;
- (D) The employer's procedures for making referrals in accordance with subsection (c)(3);
- (E) The employer's procedures for temporary risk reduction measures prior to transfer;
- (F) Training in accordance with subsection (g) and Section 5144 of these orders, when respiratory protection is used;
- (G) The employer's medical services procedures in accordance with subsection (h), the methods of reporting exposure incidents, and the employer's procedures for providing employees with post-exposure evaluation;
- (H) Information on vaccines the employer will make available, including the seasonal influenza vaccine. For each vaccine, this information shall include the efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;
- (I) How employees can access the employer's written procedures and how employees can

participate in reviewing the effectiveness of the employer's procedures in accordance with subsection (c)(8); and

(J) An opportunity for interactive questions and answers with a person who is knowledgeable in the subject matter as it relates to the workplace that the training addresses and who is also knowledgeable in the employer's infection control procedures. Training not given in person shall provide for interactive questions to be answered within 24 hours by a knowledgeable person.

Alleged Violation Description

Prior to and during the course of the inspection, including but not limited to, on May 13th, 2020, the employer failed to ensure that all employees with occupational exposure to aerosol transmissible diseases participate in a training program that includes the requirements as specified in this subsection, in the following ways:

Instance 1:

The employer failed to ensure that all employees received training at the time of initial assignment to tasks where occupational exposure to aerosol transmissible diseases may take place, and at least annually thereafter.

Instance 2:

The employer failed to ensure that employees received additional training when the COVID-19 pandemic resulted in changes in the workplace or changes in procedures that could affect worker exposure to Aerosol Transmissible Pathogens.

Date By Which Violation Must be Abated:

December 01, 2020

Proposed Penalty:

\$20250.00

Charles Rachlis Wendy Hogle-Lui
Compliance Officer / District Manager