

What We Know

ARTICLES & INSIGHTS

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Eleven Key Takeaways from OSHA's Recent COVID-19 Workplace Guidance

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Now that many of us have been vaccinated, what should employers do to ensure a safe workplace in light of lingering threats of exposure to COVID-19? On June 10, 2021, the Occupational Safety and Health Administration published its updated *Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*. This Guidance focuses on “unvaccinated or otherwise at-risk” employees and is aimed at helping employers identify COVID-19 exposure risks and prevent exposure and infection.

Below are some of the key takeaways from the updated OSHA Guidance:

1. The Guidance Provides Wide Latitude to Most Employers.

With the exception of healthcare and public transportation workplace settings, employers generally no longer need to take steps to protect their workers from COVID-19 exposure in any workplace or well-defined portions of a workplace in which all employees are fully vaccinated. Therefore, the Guidance pertains to unvaccinated workers or otherwise at-risk workers (“Covered Employees”). At-risk workers are defined as those who may not be capable of a full immune response to vaccination because of a prior transplant or prolonged use of corticosteroids or other immune-weakening medications.

2. The Guidance Provides that Employers Should Engage in an Interactive Process with Covered Employees.

The purpose of this engagement should be to determine how to implement multi-layered interventions to protect Covered Employees and to mitigate the spread of COVID-19.

3. The Guidance Recommends Employers Ensure that Workers Remain Informed.

Recommended measures include providing education and training on workplace policies and procedures that have been implemented to protect workers from

COVID-19 hazards, as well as basic facts about COVID-19, including how it is spread and the importance of social distancing (including remote work), ventilation, vaccination, use of face coverings, and hand hygiene. In addition, employers should provide these communications in a language that employees understand and in an accessible format.

4. The Guidance Recommends the Provision of Face Coverings and Physical Distancing Measures for Covered Employees.

Employers should provide face coverings (including respirators or other PPE) for Covered Employees at no cost. In addition, employers should suggest that unvaccinated customers, visitors, or guests wear face coverings. The Guidance further recommends that paid time off be granted to all employees to get vaccinated.

5. The Guidance Provides that Employers Implement Measures to Curb Transmission.

Employers are advised to instruct any infected workers, unvaccinated workers who have had close contact with someone who tested positive for COVID-19, and all workers with COVID-19 symptoms to stay home from work to prevent or reduce the risk of transmission of the virus.

6. The Guidance Recommends Maintenance of Appropriate Ventilation.

Systems should conform with the CDC's publication *Ventilation in Buildings* and the OSHA *Alert Pertaining to COVID-19 Guidance on Ventilation in the Workplace*, both of which recommendations are based on ASHRAE's *Guidance for Building Operations During the COVID-19 Pandemic*.

7. The Guidance Recommends Employers Implement Provisions Prohibiting Retaliation.

Employers should set up an anonymous process for workers to voice concerns about COVID-19 related hazards with clear advice that they will not experience any form of retaliation as a result of voicing such concerns.

8. The Guidance Provides that Employers Perform Routine Cleaning and Disinfection.

Employers should utilize standards contained in the CDC's cleaning and disinfection recommendations and OSHA's mandatory standards codified at 29 CFR 1910.1200 and 29 CFR 1910.132, 133, and 138 for hazard communication and details about PPE appropriate for exposure to the virus.

9. The Guidance Provides Details About Mandatory Standards for PPE and other Employee Protections.

These standards include requirements for PPE, respiratory protection, sanitation, protection from bloodborne pathogens, and OSHA's requirements for employee access to medical and exposure records.

10. The Guidance Reminds Employers of Their Obligation to Record and Report COVID-19 Infections and Deaths.

Employers are responsible for recording work-related cases of COVID-19 illness on OSHA's Form 300 logs if (1) the case is a confirmed case of COVID-19, (2) the case is work-related, and (3) the case involves one or more relevant recording criteria, such as medical treatment or days away from work. In addition, employers must follow additional requirements when reporting COVID-19 fatalities and hospitalizations to OSHA.

11. In Higher-Risk Workplaces, Employers Should implement additional Mitigation Measures.

Such workplaces include manufacturing, meat, poultry, and seafood processing, and high-volume retail and grocery establishments as such workplaces require workers to work indoors in close contact for extended durations. For Covered Employees in such settings, it is recommended that employers stagger break times, maintain strict physical distancing, with visual cues to remind workers to remain appropriate distancing and implement workplace-specific strategies to improve ventilation.

While this Guidance is not legally binding, employers are nevertheless encouraged to review its content and to utilize the measures contained therein as appropriate. Additionally, nothing in the Guidance limits state or local government mandates that go beyond OSHA's recommendations. Employers are further encouraged to keep updated as it is anticipated that OSHA, the EEOC, and the CDC will provide further guidance on these issues in the coming months.

If you have questions about this OSHA guidance or any other employment-related matter, please call [Connie Carrigan](tel:9192502119) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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