

OSHA PROVIDES NEW COVID-19 WORKPLACE GUIDANCE: THE 10 THINGS EMPLOYERS NEED TO KNOW

Insights
Jun 14, 2021

On the same day the Occupational Safety and Health Administration issued the [long-anticipated Emergency Temporary Standard \(ETS\) applicable to healthcare employers](#), the agency also issued updated [Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#) applicable to all other workplace settings. Generally, OSHA aimed its June 10 guidance at “unvaccinated or otherwise at-risk” employees to help employers identify COVID-19 exposure risks and to prevent exposure and infection. And while this guidance is not legally binding like the healthcare ETS, you should still carefully review its contents and use the guidance to determine any appropriate control measures to implement. Here are the 10 key takeaways to ensure your workplace takes appropriate measures.

The Basics: OSHA Gives Wide Latitude to Most Employers

From an overall perspective, OSHA provides that, except for workplace settings covered by the agency’s healthcare ETS and the remaining mask requirements for public transportation settings, most employers no longer need to take steps to protect their workers from COVID-19 exposure in any workplace, or well-defined portions of a workplace, where all employees are fully vaccinated. However, employers should still protect unvaccinated or otherwise at-risk workers in their workplaces, or well-defined portions of workplaces. Indeed, OSHA’s guidance makes clear that employers not covered by the healthcare ETS no longer need to implement measures to protect fully vaccinated

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workers, unless those workers are “otherwise at risk” or unless required by federal, state, local, tribal, or territorial laws, rules, and regulations.

For definitional purposes, the agency noted that “unvaccinated workers” are those who do not meet the CDC’s definition of “fully vaccinated” (two weeks past the final shot in a COVID-19 vaccine series). OSHA’s guidance considers “otherwise at-risk” workers to be 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.

The 10 Recommended Measures for Covered Employers Under OSHA’s New Guidance

OSHA’s guidance states that employers should engage with workers and their representatives to determine how to implement multi-layered interventions to protect unvaccinated or otherwise at-risk workers and mitigate the spread of COVID-19, including:

1. Grant paid time off for employees to get vaccinated.
2. Instruct any infected workers, unvaccinated workers who have had close contact with someone who tested positive for SARS-CoV-2, and all workers with COVID-19 symptoms to stay home from work to prevent or reduce the risk of transmission of the virus that causes COVID-19.
3. Implement physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas.
4. Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks, unless their work task requires a respirator or other PPE. Employers should provide face coverings to unvaccinated and otherwise at-risk workers at no cost. OSHA also provides that employers should suggest that unvaccinated customers, visitors, or guests wear face coverings.
5. Educate and train workers on your COVID-19 policies and procedures using accessible formats and in a language they understand. Communications should be in plain language that unvaccinated and otherwise at-risk workers understand (including non-English languages, and American Sign Language or other accessible

communication methods, if applicable) and in a manner accessible to individuals with disabilities. Training should include:

- Basic facts about COVID-19, including how it is spread and the importance of physical distancing (including remote work), ventilation, vaccination, use of face coverings, and hand hygiene.
 - Workplace policies and procedures implemented to protect workers from COVID-19 hazards.
6. Maintain ventilation systems according to the [CDC's Ventilation in Buildings](#) and in the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#). These recommendations are based on ASHRAE [Guidance for Building Operations During the COVID-19 Pandemic](#).
 7. Perform routine cleaning and disinfection and follow the [CDC cleaning and disinfection recommendations](#) and OSHA's mandatory standards [29 CFR 1910.1200](#) and [1910.132](#), [133](#), and [138](#) for hazard communication and PPE appropriate for exposure to cleaning chemicals.
 8. Record and report COVID-19 infections and deaths: Under mandatory OSHA rules in 29 CFR 1904, employers are responsible for recording work-related cases of COVID-19 illness on OSHA's [Form 300 logs](#) if the following requirements are met: (1) the case is a confirmed case of COVID-19; (2) the case is [work-related](#) (as defined by [29 CFR 1904.5](#)); and (3) the case involves one or more [relevant recording criteria](#) (set forth in [29 CFR 1904.7](#)) (e.g., medical treatment, days away from work). Employers must follow the requirements in [29 CFR 1904](#) when [reporting COVID-19 fatalities and hospitalizations to OSHA](#).
 9. Implement protections from retaliation and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.
 10. Follow other applicable mandatory OSHA standards including requirements for PPE (29 CFR 1910, Subpart I (e.g., [1910.132](#) and [133](#))), respiratory protection ([29 CFR 1910.134](#)), sanitation ([29 CFR 1910.141](#)), protection from bloodborne pathogens: ([29 CFR 1910.1030](#)), and OSHA's

requirements for employee access to medical and exposure records ([29 CFR 1910.1020](#)).

What are Measures Appropriate for Higher-Risk Workplaces with Mixed-Vaccination Status Workers?

OSHA's guidance also specifically identifies additional measures you should take to mitigate the spread of COVID-19 for unvaccinated and otherwise at-risk workers in higher-risk workplaces. Higher-risk workplaces include manufacturing, meat and poultry processing, high-volume retail and grocery, and seafood processing, given the potential for workers to work indoors, in close contact for extended durations (e.g., for eight to 12 hours per shift). In all higher-risk workplaces where there are unvaccinated or otherwise at-risk workers, OSHA recommends:

- Stagger break times in these generally high-population workplaces, or provide temporary break areas and restrooms to avoid groups of unvaccinated or otherwise at-risk workers congregating during breaks. Unvaccinated or otherwise at-risk workers should maintain at least six feet of distance from others at all times, including on breaks.
- Stagger workers' arrival and departure times to avoid congregations of unvaccinated or otherwise at-risk in parking areas, locker rooms, and near time clocks.
- Provide visual cues (e.g., floor markings, signs) as a reminder to maintain physical distancing.
- Implement workplace-specific strategies to improve ventilation that protects workers as outlined in [CDC's Ventilation in Buildings](#) and in the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#).

Conclusion

Most businesses should already have COVID-19 measures in place to comply with OSHA's latest guidance. However, if you have relaxed measures or measures don't adequately protect unvaccinated or otherwise at-risk workers employers, you should act immediately to ensure compliance. Additionally, as a reminder, nothing in the guidance limits state or local government mandates or guidance that go beyond OSHA's suggestions or recommendations.

Fisher Phillips will continue to monitor this and other workplace safety guidance, and will provide updates as appropriate. Make sure you are subscribed to the [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any member of our [Workplace Safety Practice Group](#).