

SAME OLD SITUATION FOR EMPLOYERS? TOP 10 TAKEAWAYS AS OSHA UPDATES COVID-19 WORKPLACE GUIDANCE

Insights
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In response to the surge of delta variant cases across the country, federal workplace safety officials just issued updated guidance to help employers and workers identify current COVID-19 risks for unvaccinated or otherwise at-risk workers – making many employers feel like they are in the same ol' situation they were in just a few months ago. The Occupational Safety and Health Administration's (OSHA's) updated guidance, released on August 13, [revises its June 2021 guidance](#) applicable to those not covered by OSHA's COVID-19 Emergency Temporary Standard (ETS) for healthcare workplaces and adheres to [updated Centers for Disease Control and Prevention \(CDC\) coronavirus guidance issued last month](#). What are the top 10 takeaways employers need to know about with respect to OSHA's most recent guidance?

OSHA's Updated Recommendations

As most are aware by now, the [CDC updated its recommendations](#) for fully vaccinated individuals to reduce their risk of becoming infected with the delta variant and potentially spreading it to others. The CDC's guidance addresses mask wearing in public indoor settings; choosing to wear masks regardless of the potential level of transmission (particularly if individuals are at risk or have someone in their household who is at increased risk of severe disease or not fully vaccinated); and revised testing recommendations for known exposures.

In its revised guidance, OSHA has essentially adopted analogous recommendations for employers. To follow this

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guidance, you should implement multi-layered interventions to protect unvaccinated and otherwise at-risk workers and mitigate the spread of COVID-19. In light of OSHA's recent guidance, it is clear the agency is focused at facilitating higher vaccination rates via imposing new standards on employers.

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Top 10 Employer Takeaways

Here are the top 10 takeaways from OSHA's new guidance.

- 1. *Employers should implement methods to facilitate and encourage employee vaccination.*** OSHA recommends providing employees with paid time off to get vaccinated and paid time off to recover from any ill side effects of the vaccine. Employers are also encouraged to work with local public health authorities to provide vaccinations in the workplace for unvaccinated workers. Finally, OSHA suggests employers consider adopting policies requiring workers to get vaccinated or undergo regular COVID-19 testing – in addition to mask wearing and physical distancing – if they remain unvaccinated.
- 2. *Employers should instruct infected workers, unvaccinated workers who have had close contact with a positive COVID-19 case, and all workers with COVID-19 symptoms to stay home from work.*** As recommended by the CDC, fully vaccinated individuals who have a known COVID-19 exposure should get tested three to five days after the exposure event and wear a mask in public indoor settings for 14 days (or until they receive a negative test result). Individuals who are not fully vaccinated should be tested immediately, and if negative, tested again in five to seven days after their last exposure (or immediately if symptoms develop). OSHA expects all absentee policies to be non-punitive and that employers will promptly eliminate policies that might encourage workers to come to work sick.
- 3. *Employers should implement physical distancing in all common areas where unvaccinated and otherwise at-risk workers may be present.*** OSHA believes a “key way” to protect workers is to require physical distancing in the workplace – generally this means at least six feet. However, as workplace conditions may require employees to work close to one another and/or customers for extended periods of time, employers may consider limiting the number of unvaccinated or

otherwise at-risk employees in one place at any given time. For example, employers might implement flexible schedules, allow remote/telework, rotate/stagger shifts, deliver services remotely (e.g., phone, video, or web), etc.

At sites where unvaccinated or otherwise at-risk workers cannot physically distance, transparent shields (or other like barriers) may be considered. These types of barriers should block face-to-face pathways between individuals to prevent direct transmission of respiratory droplets. Any openings should be placed at the bottom, made as small as possible, and the height should consider the employee's posture while working (i.e., sitting or standing). Ventilation, fire safety, and other safety considerations should be incorporated when designing and installing barriers.

- 4. *Unless their work task requires a respirator or other PPE, employers should provide workers no-cost face coverings or surgical masks as appropriate.*** OSHA's guidance mirrors that of the CDC by recommending even fully vaccinated individuals wear masks in public indoor settings, noting that fully vaccinated people may desire to wear masks in public indoor settings regardless of community level of transmission. OSHA reiterates that workers should wear a face covering that covers both the nose and mouth to contain the wearer's respiratory droplets and to help protect others and potentially themselves.

Face coverings should be made of at least two layers of a tightly woven breathable fabric, such as cotton, and should not have exhalation valves or vents. They should fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face. Workers who are outdoors may opt not to wear face coverings unless they are at risk. Regardless, employers should support employees who continue to wear a face covering, especially when working closely with others. If an employer determines PPE is necessary to protect unvaccinated and otherwise at-risk workers from exposure to COVID-19, the employer must provide PPE per the relevant OSHA PPE standards.

- 5. *Employers should educate and train workers on their COVID-19 policies and procedures using accessible formats and in languages they understand.*** Employers

should train managers on how to implement their COVID-19 policies. These policies should be communicated clearly, frequently, and using multiple methods to promote a safe and healthy workplace. OSHA suggests that 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, hand hygiene, and workplace policies and procedures to protect workers from COVID-19 hazards. In addition, employers should implement a means of tracking which (and when) workers receive this information.

6. *Employers should suggest or require unvaccinated customers, visitors, or guests to wear face coverings in public-facing workplaces, such as retail establishments.*

All customers, visitors, or guests should wear face coverings in public, indoor settings in areas of substantial or high transmission. This could include posting a notice or otherwise suggesting or requiring individuals wear face coverings, even if no longer required by your jurisdiction.

7. *Employers should maintain workplace ventilation systems.* As COVID-19 spreads more easily indoors, improving and maintaining ventilation systems is a key engineering control. Such a maintenance program can be used as part of a layered strategy to reduce the concentration of viral particles in indoor air (and consequently reduce the risk of transmission to unvaccinated and otherwise at-risk workers in particular). A well-maintained ventilation system is essential in any indoor workplace setting, and when working properly, ventilation is a primary control measure to limit the spread of COVID-19.

Specific recommendations can be located within the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Guidance for Building Operations and Industrial Settings during the COVID-19 Pandemic. Key measures include ensuring HVAC

systems are operating in accordance with the manufacturer's specifications, conducting regularly scheduled inspections and maintenance, maximizing the amount of outside air supplied, installing air filters with a Minimum Efficiency Reporting Value (MERV) 13 or higher where feasible. Buildings without HVAC systems should maximize natural ventilation by opening windows or doors, when conditions allow (if that does not pose a safety risk) and consider using portable air cleaners with High Efficiency Particulate Air (HEPA) filters in spaces with high occupancy or limited ventilation.

8. ***Employers should perform routine cleaning and disinfection.*** This is especially important if someone who has been in the facility within 24 hours is suspected of having COVID-19 or is a confirmed COVID-19 case. In those situations, OSHA recommends following the CDC's cleaning and disinfection recommendations.

9. ***Employers must record and report workplace COVID-19 infections and deaths:*** Under OSHA's recordkeeping standard, employers are required to record 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; and (3) the case involves one or more relevant recording criteria (e.g., medical treatment, days away from work). Likewise, employers must follow the requirements when reporting work-related COVID-19 fatalities and hospitalizations.

10. ***Employers should implement protections from retaliation and set up anonymous methods for workers to raise concerns about COVID-19-related hazards.*** Employers should ensure workers know whom to contact with questions and/or concerns about workplace safety and health, and that there are prohibitions against retaliation for raising workplace safety and health concerns or engaging in other protected occupational safety and health activities. This could be accomplished by using an employee hotline or other method for workers to voice concerns anonymously.

Conclusion

The guidance also reminds employers to follow all other applicable mandatory OSHA standards. These mandatory

OSHA standards include requirements for PPE, respiratory protection, sanitation, protection from bloodborne pathogens, and OSHA's requirements for employee access to medical and exposure records. If you are unfamiliar with the world of workplace safety and need more information about requirements, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Workplace Safety Practice Group](#).

As employers continue to react to the ever-changing landscape of the COVID-19 pandemic, you should keep up to date with recent developments at the federal, state, and local levels. This includes monitoring the CDC, and consulting local medical data related to infection and vaccination rates. 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 authors of this Insight, or any member of our [Workplace Safety Practice Group](#).