The 10 Most Common Employer Questions After the CDC Loosens its COVID-19 Guidance

Insights
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The nation's federal health authorities marked the next chapter of the pandemic yesterday by significantly loosening many COVID-19 recommendations – including dropping the "six-foot" social distancing rule – thereby lightening employers' burden to manage the virus. While the CDC's August 11 announcement of revised guidelines comes as a welcome step in the years-long battle against the novel coronavirus, it doesn't necessarily mean it's time to drop your guard and pretend that COVID-19 is gone completely. Here are the 10 top questions you should be asking now, along with practical answers to help you navigate this next phase.

1. **Why did the CDC loosen its COVID-19 recommendations?**

   "The current conditions of this pandemic are very different from those of the last two years," CDC epidemiologist Greta Massetti said yesterday in a news briefing accompanying the release of the revised guidance. Rather than attacking the virus in every possible situation, the new guidance reflects the fact that a combination of vaccinations and therapeutics have curbed severe illness and death from COVID-19, and emphasis should now be placed on protecting high-risk individuals.

2. **What is the practical impact of the revisions?**

   Essentially the CDC is putting most of the burden on avoiding and dealing with COVID-19 on individuals instead of employers and businesses.

3. **What are the CDC's new guidelines for social distancing and the six-foot rule?**

   In perhaps the biggest change to the nation's approach to the virus, the CDC says that the six-foot social distancing rule – which has mostly fallen by the wayside for most of the country anyway – is no longer emphasized. Although distancing is still one way to mitigate the likelihood of infection, it is now just one of many other methods suggested by the CDC.

4. **Should employers routinely screen apparently healthy employees for potential COVID-19 cases?**

   The CDC says this is no longer necessary. Instead, when considering whether to implement screening testing for asymptomatic people with no known exposure to COVID-19, the only

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workplace settings recommended to go this route include those with congregate housing and limited access to medical care.

5. **What about contact tracing after positive cases?**

   The CDC now only recommends case investigation and contact tracing in healthcare settings and certain "high-risk congregate settings" like nursing homes. In all other circumstances, the CDC says that public health efforts should instead focus on notifying those potentially exposed to positive COVID-19 cases and providing accurate information and testing resources to them.

6. **When should individuals get a COVID-19 test?**

   According to the CDC, people should only seek testing when they are either symptomatic or have a known or suspected exposure to someone with COVID-19.

7. **What should workers do if exposed to COVID-19?**

   Quarantine of exposed persons is no longer recommended – regardless of vaccination status. **This is another significant change, as the CDC previously recommended that unvaccinated individuals quarantine for at least five days after exposure.** Instead, the CDC recommends that those who have been exposed to an infected person wear a mask for 10 days around others when indoors in public. They should also test for COVID-19 at least five days after exposure (or sooner if they are symptomatic) – again, irrespective of their vaccination status.

8. **What should workers do if they are symptomatic or infected?**

   The CDC still recommends that symptomatic or infected persons promptly isolate and remain in isolation for at least five days. If they must be around others, they should wear a well-fitting, high-quality mask or respirator.

   - The CDC says they can end isolation after five days only when they are without a fever for at least 24 hours (without the use of medication) and all other symptoms have improved. However, the CDC does <u>not</u> recommend that a person take a test to exit isolation. Just as before, though, they should continue to wear a mask or respirator around others at home and in public through day 10.
   - People who have access to antigen tests and choose to use testing to determine when they can discontinue masking should wait to take the first test until at least day six, and they are without a fever for at least 24 hours (without the use of fever-reducing medication) and all other symptoms have improved. Taking two antigen tests (with at least 48 hours between tests) provides more reliable information, the CDC says, because of improved test sensitivity. The CDC says two consecutive test results must be negative to discontinue masking. If either test result is positive, the person should continue to wear a mask around others and continue testing every 48 hours until they have two straight negative results.

9. **What are the CDC's guidelines on vaccines and masking?**

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These recommendations have not changed.

- ***Vaccines –*** The CDC says it is important to continue to increase vaccination coverage and ensure that everyone is up to date with boosters. It recommends that vaccination is still an essential strategy in curbing the impact of COVID-19, so you should consider this recommendation as you decide whether to mandate the vaccine for your workers and patrons (here is a helpful resource to consider when making this decision at your place of business).
- ***Masking –*** The CDC has retained its "community level" stance in recommending masking based on the current levels of COVID-19 in the local area.
  - At the low Community Level, the CDC has no masking recommendations.
  - At the medium Community Level, the CDC recommends adding masking or respirator protections for those at high risk for severe illness.
  - At the high Community Level, the CDC recommends that all persons wear masks indoors in public settings like workplaces and businesses.

10. **What does OSHA say about all of this?**

For employers concerned about legal liability, this is the million-dollar question. After all, the CDC has no enforcement authority and will not be the agency knocking on your door to inspect your workplace safety. Instead, that falls on the Occupational Safety and Health Administration (OSHA) or its state equivalents across the country. OSHA is the workplace safety arm of the Department of Labor that has the power to investigate and cite businesses for unsafe conditions. We have already seen OSHA levy massive fines against employers for allegedly not following COVID-19 safety protocols, so this is the agency whose opinion matters most.

The bad news is that OSHA has not updated its own COVID-19 workplace safety recommendations for almost a year. Instead, its website says "UPDATE COMING SOON" – the same message that has appeared there since at least March 2022. The good news is that OSHA largely defers to the CDC when it comes to pandemic-related guidance, and we fully expect the agency to eventually adopt these recommendations as best practices.

For now, businesses choosing to follow the new CDC guidelines should point to them if OSHA comes knocking at their door inquiring about COVID-19 protocols. It would certainly be imprudent for OSHA to cite and fine an employer for strictly following the CDC's guidelines absent unusual circumstances.

Conclusion

We will continue to monitor these developments and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our Workplace Safety Practice Group.

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