

# Insights

## OSHA Issues Updated COVID-19 Guidance for Employers

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Recently the Occupational Safety and Health Administration (“OSHA”) updated its COVID-19 Emergency Temporary Standard (“ETS”). Under this **new ETS**, OSHA details various workplace safety guidelines that employers are advised to follow to protect unvaccinated and otherwise at-risk workers from exposure and infection.

The guidelines include new recommendations in addition to the mandatory OSHA standards that require “employers to provide their workers with a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm” that a prior **client alert** detailed. As the CDC loosens restrictions for fully vaccinated individuals, it is important for employers to continue taking precautions as advised by federal, state, and local guidance in environments where not everyone is fully vaccinated.

As a part of the new ETS, OSHA details the following recommendations to protect unvaccinated and at-risk workers:

1. Offer paid time off for employees to get vaccinated or recover from post-vaccination symptoms.

As COVID-19 vaccine availability increases, employees may need to feel supported in the decision to receive a vaccine. Further, businesses with fewer than 500 employees may be eligible for tax credits for this paid time off under the American Rescue Plan (“ARP”), so such a requirement may not cause a financial burden for the employer.

2. Direct infected workers, unvaccinated workers who have had close contact with a person who was positive for SARS-CoV-2, and all workers with COVID-19 symptoms to stay home from work.

This step can help prevent or reduce the risk of COVID-19 spread. Employers should also review attendance policies to determine what flexibility might exist for employees in these situations. The availability of paid time off may incentivize employees to stay home in these situations and could also entitle the employer to a tax credit under the ARP.

3. Maintain social distancing for unvaccinated and otherwise at-risk workers in all communal work areas.

Ways in which employers can achieve social distancing include by physically spreading out workers and also by alternative scheduling for unvaccinated workers to limit their presence in the workplace.

4. Provide unvaccinated and otherwise at-risk workers with masks at no cost and encourage unvaccinated visitors to wear masks.

OSHA provides specific guidance as to the type of mask, the obligation to accommodate disabilities and religious accommodations, and specific environments that may require additional cleanings and guidance to employees. OSHA also encourages employers to suggest that unvaccinated customers, visitors, or guests wear face coverings, which can be accomplished through posting notices to this effect.

5. Educate workers on the company's COVID-19 policies in accessible formats and in languages workers understand.

Not only do employees need to be able to review an employer's COVID-19 policies, but managers should be trained in their implementation. Training can help ensure employers properly handle requests for accommodation and any employee concerns.

6. Provide a safe workplace by cleaning and disinfecting work areas in accordance with CDC guidance and improving ventilation systems to protect individuals in closed spaces.

In order to keep employees safe and protected from COVID-19, employers should continue cleaning and disinfecting and encouraging their employees to do the same. Further, if an organization has not already improved its ventilation system, doing so could decrease the spread of COVID-19. If anyone has been in the facility and within 24 hours is suspected of contracting COVID-19, employers should follow the CDC cleaning and disinfection recommendations.

7. Create an anonymous process for employees to report unsafe working conditions and take steps to protect them from retaliation for reporting.

Employers cannot discriminate or retaliate against employees who are reporting, or deter them from reporting, unsafe working conditions. Examples of discrimination that could violate Section 1(c) of the Occupational Safety and Health Act include:

discriminating against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency, or to the public, such as through print, online, social, or any other media; or against an employee for voluntarily providing and safely wearing their own PPE, such as a respirator, face shield, gloves, or surgical mask.

See OSHA **New ETS**. Employers must notify workers of the right to a safe and healthy work environment and ensure workers are aware of who to contact with concerns regarding this requirement along with the fact that they will not be discriminated or retaliated against for doing so.

It is crucial that employers keep up to date on the changing guidance from the Department of Labor and OSHA in order to protect their workers from exposure and themselves from OSHA enforcement actions. If you have any questions about complying with OSHA guidelines or preparing policies or directions to comply with OSHA guidance, please contact **Elizabeth M. Roberson** or another member of our **Employment Law Group**.

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