

OSHA Updates General Workplace COVID-19 Guidance, Issues Emergency Temporary Standard for Health Care Settings

June 14, 2021

On June 10, 2021, the federal Occupational Safety and Health Administration (OSHA) updated its guidance entitled **Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace** to reflect the change in CDC's guidance regarding fully vaccinated people.

The guidance expressly states that it creates no new legal obligations, but only recommendations that are advisory in nature, as well as descriptions of previously existing mandatory OSHA standards. It also states that it applies to many workplaces, but several health care workplace settings will be covered by a separate mandatory OSHA COVID-19 Emergency Temporary Standard.

With the updated guidance, OSHA states that "most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure" unless otherwise required by federal, state, and local laws and directives. Thus, OSHA's updated guidance focuses only on protecting unvaccinated or otherwise at-risk workers. "At-risk workers" include those with conditions such as prior transplants and prolonged use of medications that affect their ability to have a full immune response to vaccination. OSHA advises employers to take steps to protect these at-risk workers as they would unvaccinated workers, regardless of their vaccination status.

The steps for employers to protect unvaccinated or otherwise at-risk workers in the workplace may include:

- Granting paid time off for employees to get vaccinated.
- Instructing any infected or symptomatic workers and unvaccinated workers who have had close contact with infected individuals to stay home from work.
- Requiring social distancing for unvaccinated and otherwise at-risk workers in all communal work areas, and consider strategies to limit the number of unvaccinated or at-risk workers in one place at any given time, including installing shields or barriers to separate these workers if 6-foot distancing cannot be maintained.
- Providing unvaccinated and otherwise at-risk workers with face coverings. Unless required by applicable laws, unvaccinated workers may opt to not wear face coverings outdoors, but all workers should be supported in continuing to wear face coverings if they choose.
- Educating and training workers on COVID-19 policies and procedures using accessible formats and languages they understand. Additionally, ensuring that workers understand their right to a safe work environment, how to report concerns, and their right to be free from retaliation for raising issues of workplace health and safety.
- Especially in public-facing workplaces, suggesting that unvaccinated customers, visitors or guests wear face coverings.
- Maintaining ventilation systems.
- Performing routine cleaning and infection and following the CDC cleaning and disinfection recommendations if someone suspected of having or confirmed to have COVID-19 has been in the facility within 24 hours.

Continued

- Recording and reporting work-related COVID-19 infection and deaths pursuant to OSHA **mandatory regulations**.
- Implementing protections from retaliation and setting up an anonymous process for workers to raise concerns about COVID-19-related hazards.
- Following other applicable mandatory OSHA standards.

The OSHA guidance also sets forth additional measures that can be taken at high-risk workplaces with mixed vaccination status workers. High-risk workplaces might exist where there is frequent or prolonged close contact between unvaccinated or at-risk workers, especially in shared spaces such as break rooms, locker rooms and entrance/exit areas. Examples of these higher-risk workplaces include manufacturing, meat and poultry processing, high-volume retail and grocery, and seafood processing. In such workplaces, employers should consider additional measures, including:

- In all higher-risk workplaces:
 - Staggering break times or providing temporary break areas and restrooms to avoid congregations of unvaccinated or otherwise at-risk workers during breaks.
 - Staggering workers' arrival and departure times to avoid congregation of unvaccinated or otherwise at-risk workers in parking areas, locker rooms and near time clocks.
 - Providing visual cues as a reminder to maintain physical distancing.
 - Implementing strategies to improve ventilation.
- In workplaces with processing or assembly lines:
 - Considering proper spacing of unvaccinated or otherwise at-risk workers, and if that is not possible, installing physical barriers.
- In retail workplaces:
 - Suggesting masks for unvaccinated (or unknown status) customers and other visitors.
 - Considering means for physical distancing from people who are not known to be fully vaccinated; if physical distancing is not possible, considering installing barriers between workstations and between workers and customers.
 - Moving the electronic payment terminal/credit card reader farther away from any unvaccinated or otherwise at-risk workers.
 - Shifting primary stocking activities of unvaccinated or otherwise at-risk workers to off-peak or after hours to reduce contact between such workers and customers.
- In workplaces with shared transportation:
 - Notifying unvaccinated and at-risk workers of the risk of travelling using employer-provided transportation and limiting the number of workers in one vehicle.
 - Making sure all unvaccinated or otherwise at-risk workers sharing a vehicle are wearing appropriate face coverings.

Continued

Also on June 10, 2021, OSHA issued the **Emergency Temporary Standard for Healthcare** (the ETS), which set out the requirements for health care settings to protect workers in these workplaces from contracting COVID-19. Consistent with CDC guidelines, the ETS exempts fully vaccinated workers from face coverings, physical distancing and barrier requirements when in well-defined areas where there is no reasonable expectation that any person will be present with suspected or confirmed COVID-19. The ETS is effective immediately once published in the Federal Register, and covered employers must comply with most provisions within 14 days. In the event that an employer, despite its best efforts, is unable to comply with all requirements of the ETS by compliance dates, OSHA states that it is willing to use its enforcement discretion if the employer can show it has made good efforts to comply but has been unable to do so.

If you have any questions about the updated OSHA COVID-19 guidance, ETS, or how the changes impact your workplace, please contact the authors of this alert or your Miller Canfield attorney.

This information is based on the facts and guidance available at the time of publication and may change.