

OSHA RELAXES RECOMMENDATIONS FOR PROTECTING VACCINATED WORKERS AND ISSUES UPDATED GUIDANCE FOCUSED ON MITIGATING AND PREVENTING THE SPREAD OF COVID-19 AMONG UNVACCINATED AND “AT RISK” EMPLOYEES

Hodgson Russ OSHA Alert
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The Occupational Safety and Health Administration (OSHA) released a new COVID-19 Emergency Temporary Standard (ETS) applicable to healthcare providers on June 10, 2021 (as discussed in our [recent alert](#)). That same day, OSHA also updated its prior guidance entitled *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, initially issued on January 29, 2021. The revised June 10 Guidance is intended to assist employers not covered by the ETS. It focuses on protecting unvaccinated and at-risk workers and encouraging COVID-19 vaccinations, and provides links to updated U.S. Centers for Disease Control (CDC) recommendations.

OSHA’s latest Guidance recognizes that CDC recommendations now reflect the view that fully vaccinated individuals may resume most activities without face masks or social distancing, precautions that unvaccinated and “at risk” individuals should continue to follow. Vaccinated persons, however, should still monitor themselves for symptoms for 14 days following an exposure, and get tested and avoid others if they become symptomatic. Based on the CDC’s lead, OSHA has relaxed its recommendations and guidance for vaccinated employees, stating: “Unless otherwise required by federal, state, local, tribal, or territorial laws, rules, and regulations, most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure. This guidance focuses only on protecting unvaccinated or otherwise at-risk workers in their workplaces (or well-defined portions of workplaces).”

The Guidance encourages employers to take steps to make it easier for employees to access and obtain vaccinations. It reminds employers that unvaccinated and other “at risk” workers (i.e., those with medical conditions or treatment regimens that may affect the person’s ability to have a full immune response to vaccination) still require protection from potential COVID-19 exposures and close contact situations.

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Accordingly, OSHA is recommending that employers implement multiple layers of controls to help protect these workers, and engage with their employees and representatives on the implementation of “multi-layered interventions” to protect them and mitigate the spread of COVID-19. OSHA’s list of recommended interventions for employers include the following actions:

- Granting paid time off to employees to obtain vaccinations (for which employers with fewer than 500 employees may be eligible for a tax credit under the American Rescue Plan Act of 2021).
- Instructing infected workers, symptomatic workers, and unvaccinated workers who have had close contact with a COVID-19 positive person, to stay home, and ensuring that absenteeism policies are non-punitive for such events (again, tax credits may be available under the American Rescue Plan Act for sick and family leave).
- Implementing physical distancing requirements of at least 6 feet for unvaccinated and at-risk workers, including use of remote work, job rotation, staggered shifts, and flexible meetings and travel requirements. Where physical distancing cannot be maintained, OSHA recommends installing shields or barriers to separate people.
- Providing unvaccinated and “at risk” workers with face coverings, surgical masks, a respirator or other appropriate personal protective equipment (PPE) at no cost to the employees.
- Educating and training workers on the basic facts of COVID-19 disease and its spread, and the employer’s COVID-19 policies and procedures, using accessible formats and in a language they understand.
- Requesting unvaccinated customers, guests, or other visitors wear face coverings.
- Maintaining ventilation systems in accordance with manufacturer instructions and design specifications to ensure maximum operation, and utilizing Minimum Efficiency Reporting Value (MERV) 13 or higher air filters where feasible and compatible.
- Performing routine cleaning and disinfection of the workplace, and following CDC guidelines for cleaning and disinfection if an individual with a suspect or confirmed case of COVID-19 had been present within the past 24 hours, consistent with applicable Hazard Communication and PPE requirements.
- Recording work-related COVID-19 cases on the OSHA 300 Log, and reporting work-related COVID-19 fatalities and in-patient hospitalizations to OSHA, as required by 29 CFR Part 1904.
- Implementing protections from retaliation and mechanisms for anonymous reporting of COVID-19-related concerns and hazards in the workplace.
- Following all mandatory OSHA regulations as may be applicable. These include PPE, Hazard Communication, Respiratory Protection, Sanitation, Bloodborne Pathogens, and Employee Access to Medical Record Standards and Rules. Employers should also be mindful of their obligations under the General Duty Clause of the Occupational Safety and Health Act to provide a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

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OSHA’s Guidance reminds employers that reasonable accommodation requirements may be implicated for individuals with disabilities or religious beliefs under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and other federal laws with regard to unvaccinated and “at risk” employees and their compliance with policies regarding face masks, respirators, or other PPE.

In addition to providing recommendations to employers, OSHA also offers information and instruction to employees, recommending that they follow the precautions and procedures implemented in the workplace and any established COVID-19 prevention plan. The Guidance suggests that unvaccinated and “at risk” employees can also help protect themselves by identifying opportunities for vaccination, wearing face coverings over their nose and mouth, maintaining six feet of distance from other people, asking about alternative work arrangements such as telework or flexible scheduling, participating in training to learn about effective ventilation and notifying the employer of clogged and blocked vents, and using good personal hygiene such as hand-washing, covering of the mouth when coughing or sneezing, and daily self-monitoring for COVID-19 symptoms.

If you have questions about OSHA’s COVID-19 Guidance, the recording and reporting of COVID-19 illnesses, or have other questions about general OSHA requirements or compliance, please contact [Jason Markel](#) (716.848.1395), [Glen Doherty](#) (518.433.2433), or [Charles Kaplan](#) (646.218.7513).