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What OSHA's Revised COVID-19 Guidance Means for Employers

While this guidance does not create new legal obligations, employers should note that new legal obligations from OSHA relating to COVID-19 are likely forthcoming.

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Following President Biden's executive order on Protecting Worker Safety—which required OSHA to issue revised guidance to employers on COVID-19—OSHA recently issued its latest guidance, “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace.”

The guidance emphasizes the use of a COVID-19 prevention program as “the most effective way” to slow the spread of COVID-19 in the workplace and identifies key elements an employer's program should contain, including:

1. Assignment of a workplace coordinator who will be responsible for COVID-19 issues on the employer's behalf.
2. Identification of where and how workers might be exposed to COVID-19 at work.
3. Identification of a combination of measures that will limit the spread of COVID-19 in the workplace, in line with the principles of the hierarchy of controls.
4. Consideration of protections for workers at higher risk for severe illness through supportive policies and practices.
5. Establishment of a system for communicating effectively with workers and in a language they understand.
6. Educate and train workers on your COVID-19 policies and procedures using accessible formats and in a language they understand.
7. Instruct workers who are infected or potentially infected to stay home and isolate or quarantine to prevent or reduce the risk of transmission of COVID-19.
8. Minimize the negative impact of quarantine and isolation on workers.
9. Isolating workers who show symptoms at work.
10. Performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility.
11. Providing guidance on screening and testing.

12. Recording and reporting COVID-19 infections and deaths.
13. Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards.
14. Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.
15. Not distinguishing between workers who are vaccinated and those who are not.
16. Application of other applicable OSHA Standards, such as PPE requirements, respiratory protection, sanitation, protection from blood-borne pathogens, requirements for employee access to medical and exposure records and the General Duty Clause.

The guidance also contains recommendations for employers to limit the spread of COVID-19 in the workplace, including:

- Isolating workers who have or likely have COVID-19
- Quarantining workers exposed to COVID-19
- Implementing physical distancing and barriers
- Using face coverings
- Improving ventilation
- Using PPE as necessary
- Providing supplies for good hygiene practices
- Performing routine cleaning and disinfection

Employers that have been following OSHA and other federal and state agency guidance will not find too many surprises in these recommendations, as they largely incorporate prior guidance. One new issue raised by the guidance, however, is vaccination. In addition to making vaccinations available at no cost, OSHA recommends employers provide training on the “benefits and safety of vaccinations” and advises that employees who have been vaccinated “must continue to follow protective measures.” Employers looking to implement a vaccination program should review the U.S. Equal Employment Opportunity Commission's guidance on vaccinations.

As with all OSHA guidance, this latest guidance is not a standard or regulation, and it creates no new legal obligations. However, it is possible an OSHA inspector will review or rely on this guidance when determining whether to issue a citation. For example, an inspector may rely on the hazards identified in the guidance as support for the “recognized hazard” requirement of a general duty clause violation. We recommend employers review the guidance carefully and implement all applicable, feasible measures identified therein.

Finally, while this guidance does not create new legal obligations, employers should note that new legal obligations from OSHA relating to COVID-19 are likely forthcoming. The executive order that required OSHA's latest guidance also ordered OSHA to “consider whether any emergency temporary standards on COVID-19, including with respect to

masks in the workplace, are necessary, and if such standards are determined to be necessary, issue them by March 15, 2021.” We expect OSHA to issue emergency temporary standards to this effect.

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