

OSHA ISSUES EMERGENCY RULES FOR HEALTHCARE EMPLOYERS AND UPDATED GUIDANCE FOR ALL EMPLOYERS

On June 10, 2021, OSHA issued an Emergency Temporary Standard (the “Standard”) specific to COVID-19, including health screening mandates and COVID-specific protocols, and paid leave requirements for certain healthcare providers. The Standard generally enforces CDC protocols that have been recommended during the pandemic. On the same day, OSHA also issued “Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace” for all other employers (the “Guidance”). The Guidance focuses on protections for unvaccinated or otherwise “at-risk” workers, who are described as those that “cannot be protected through vaccination, cannot get vaccinated, or cannot use face coverings.” The Guidance notes that, unless otherwise required, most employers no longer need to take steps to protect fully vaccinated workers who are not otherwise at-risk from exposure to COVID-19 in the workplace, or well-defined portions of the workplace, where all employees are fully vaccinated.

In addition to the Standard and Guidance, it is important to confirm with state and local requirements as well.

Guidance For Health Care Employers

The Standard broadly applies to workplaces that provide healthcare services, such as hospitals, nursing homes, assisted living facilities, and federally qualified health care centers. However, the Standard exempts certain settings:

- employers performing healthcare services on an outpatient basis in a non-hospital setting, *if* non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter;
- well-defined hospital ambulatory care settings where all employees are fully vaccinated, all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not allowed to enter;
- home health care settings where all employees are fully vaccinated, all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;
- pharmacists dispensing prescriptions in retail settings;
- healthcare support services not performed in a healthcare setting (e.g., off-site laundry or medical billing); and
- telehealth services performed in a setting where no direct patient care occurs.

If not exempt, the Standard mandates that healthcare providers adopt the following:

- Develop and implement a written COVID-19 plan which includes a hazard assessment and policies to minimize COVID-19 transmission;
- Require social distancing of at least six feet apart when indoors and, in instances where employees cannot be separated at least six feet, install barriers at work stations in non-patient care spaces;
- Impose health screening and reporting requirements on employers and employees, including:
 - Screening employees before each work day or shift;
 - Requiring employees to notify their employer when they are experiencing symptoms or have tested positive for COVID-19; and
 - Notifying certain employees within 24 hours when a COVID-19 positive employee has been in the workplace.
- Provide reasonable time and paid leave for employees to receive COVID-19 vaccinations and recovery from vaccine side effects, if necessary (remember to check your local and state law for requirements);

- Create a log of all employee instances of COVID-19 and report all work-related COVID-19 fatalities and in-patient hospitalizations to OSHA; and
- Paid leave requirement: if an employee is required to be out of the workplace due to positive or suspected positive COVID case, employers are responsible for continuing to provide the employee with benefits and pay at the employee's regular rate of pay, up to \$1,400 per week, until the employee meets the return to work criteria. This does not apply to employers with 10 or fewer employees. Employers with less than 500 employees must pay a removed employee up to \$1,400 per week, but beginning in the third week post-removal, this amount is reduced to only two-thirds of the employee's pay, up to \$200 per day. These payment obligations are reduced by compensation that removed employees receive from any other source (i.e., from a publicly or employer-funded compensation program such as paid sick leave). Importantly, employers are not required to remove employees that do not experience symptoms and have been fully vaccinated against COVID-19 or had COVID-19 and recovered within the past 3 months.

The Standard will be effective immediately upon its publication in the Federal Register. Once published, employers must comply with most provisions within 14 days, and with provisions involving physical barriers, ventilation, and training within 30 days.

Guidance For All Other Employers

The Guidance provides examples of measures that can be taken to protect unvaccinated and at-risk workers, which include:

- Providing paid time off for employees to obtain vaccinations;
- Instruct workers that are infected, have been exposed, or present symptoms of COVID-19 to stay home from work;
- Implement physical distancing measures for unvaccinated and at-risk employees in communal work areas, limit the number of unvaccinated and at-risk workers that can be in one place at any time, and install barriers at work stations where unvaccinated and at-risk workers cannot be six feet apart;
- Require unvaccinated and at-risk and wear face coverings and provide PPE and face coverings to them, unless their task requires a respirator or other PPE;
- Suggest that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces such as retail establishments;
- Educate and provide accessible training workers on COVID-19 policies and procedures;
- Record and report COVID-19 infections and deaths;
- Follow CDC routine cleaning and disinfection guidelines and maintain ventilation systems; and
- Create an anonymous reporting process for workers to voice COVID-19 related concerns and implement protections against retaliation.

The Guidance also contains an Appendix which describes best practices for "higher risk" workplaces, such as manufacturing, retail and grocery, seafood, and meat and poultry processing workplaces, that have workers with mixed-vaccination status working in close contact for longer durations of time.

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Should you have any questions regarding the above, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

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