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OSHA Issues New Guidance for Protecting Unvaccinated or Otherwise At-risk Workers from Exposure to COVID-19

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On June 10, 2021, OSHA updated its COVID-19 guidance from January 29, 2021, which we discussed [here](#). OSHA also issued a new Emergency Temporary Standard as to COVID-19 compliance in healthcare, which will be the subject of a separate and forthcoming alert.

In its updated [guidance](#), OSHA recognizes that 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. Thus, the updated guidance focuses only on protecting unvaccinated or otherwise at-risk workers in their workplaces (or well-defined portions of workplaces). OSHA defines at-risk workers as those with conditions such as a prior transplant or those taking immune-weakening medications such that the vaccine does not fully protect them. The agency advises that employers should apply the same protections for such employees as they do for the unvaccinated workers, regardless of their vaccination status.

The Role of Employers in All Workplaces

According to the guidance, employers in all workplaces should engage with workers and their representatives to determine how to implement multi-layered interventions to protect unvaccinated or otherwise at-risk workers and mitigate the spread of COVID-19, including:

- Grant paid time off for employees to get vaccinated.
- Instruct any workers who are infected, unvaccinated workers who have had close contact with someone who tested positive for SARS-CoV-2, and all workers with COVID-19 symptoms to stay home from work to prevent or reduce the risk of viral transmission. Workplace policies that may encourage workers to come to work sick or when unvaccinated workers have been exposed to COVID-19 should be eliminated or revised. For example, employers may want to instruct managers to avoid mandatory in-person meetings.
- Implement physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas. OSHA notes that generally at least 6 feet of distance is recommended, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces.
- Employers could also limit the number of unvaccinated or otherwise at-risk workers in one place at any given time, for example by implementing flexible worksites (e.g., telework); implementing flexible work hours (e.g., rotate or stagger shifts to limit the number of such workers in the workplace at the same time); delivering services remotely (e.g., phone, video, or web); or implementing flexible meeting and travel options, all for such workers. Where physical distancing for such workers may not be feasible, OSHA recommends using plexiglass or other barriers.
- Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks unless their work task requires a respirator or other Personal Protective Equipment (“PPE”).

OSHA again notes that face coverings should be made of at least two layers of a tightly woven breathable fabric, such as cotton, and should not have exhalation valves or vents.

Unless otherwise provided by federal, state, or local requirements, unvaccinated workers who are outdoors may opt not to wear face coverings unless they are at-risk, for example, if they are immunocompromised.

Employers should support all workers in continuing face covering use if they choose, especially in order to safely work closely with other people.

- When an employer determines that PPE is necessary to protect unvaccinated and otherwise at-risk workers, the employer must provide PPE in accordance with relevant mandatory OSHA standards and should consider providing PPE in accordance with other industry-specific guidance. Respirators, if necessary, must be provided and used in compliance with 29 CFR 1910.134 (e.g., medical determination, fit testing, training on its correct use, etc.).
- Educate and train workers on your COVID-19 policies and procedures using accessible formats and in language they understand. Train managers on how to implement COVID-19 policies. Training should be directed at employees, contractors, and any other individuals on site, as appropriate, and should include basic facts about COVID-19 and the workplace policies and procedures implemented to protect workers from COVID-19 hazards.
- Suggest that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces such as retail establishments, if there are unvaccinated or otherwise at-risk workers in the workplace who are likely to interact with these customers, visitors, or guests.
- Ensure adequate ventilation by among other ways, proper operation and maintenance of the HVAC system(s), maximizing natural ventilation in buildings without HVAC systems by opening windows or doors, when conditions allow, and considering the use of portable air cleaners with HEPA filters in spaces with high occupancy or limited ventilation. Additionally, employers should continue to perform routine cleaning and disinfection.
- Record and report COVID-19 infections and fatalities as per 29 CFR 1904. Employers should also report outbreaks to health departments as required and support their contact tracing efforts.
- Ensure no retaliation against workers complaining of COVID-19 safety matters. Additionally, notify workers of their rights to a safe work environment, ensure that workers know how to voice any workplace safety concerns, and that there are prohibitions against retaliation for raising concerns.
- Follow other applicable mandatory OSHA standards.

The Role of Employers in Higher Risk Settings

The agency provides additional recommendations for workplaces where employees are in close contact with each other or the public. The guidance addresses these higher-risk workplaces – which include manufacturing, meat and poultry processing, high-volume retail and grocery, and seafood processing – and provides best practices to protect unvaccinated or otherwise at-risk workers. These recommendations are in addition to those described above.

According to the guidance:

In higher-risk workplaces where there are unvaccinated or otherwise at-risk workers:

- Stagger break times or provide temporary break areas and restrooms to avoid groups of unvaccinated or otherwise at-risk workers congregating during breaks. Physical distancing must be maintained during break times.
- Stagger workers' arrival and departure times to avoid congregations of unvaccinated or otherwise at-risk in parking areas, locker rooms, and near time clocks.
- Provide visual cues (e.g., floor markings, signs) as a reminder to maintain physical distancing.
- Implement strategies to improve ventilation in the workplace as per the CDC [guidance](#) on ventilation in buildings and OSHA [alert](#) on ventilation in the workplace.

In workplaces (or well-defined work areas) with processing or assembly lines where there are unvaccinated or otherwise at-risk workers:

- Working on food processing or assembly lines can result in virus exposure because these workplaces have often been designed for a number of workers to stand next to or across from each other to maximize productivity. Proper spacing of unvaccinated or otherwise at-risk workers (or if not possible, appropriate use of barriers) can help reduce the risks for such workers.

In retail workplaces (or well-defined work areas within retail) where there are unvaccinated or otherwise at-risk workers:

- Suggest masks for unvaccinated (or unknown-status) customers and other visitors.
- Consider means for physical distancing from other people who are not known to be fully vaccinated. If distancing is not possible, consider the use of barriers between work stations used by unvaccinated or otherwise at-risk workers and the locations customers will stand, with pass-through openings at the bottom, if possible.
- Move the electronic payment terminal/credit card reader farther away from any unvaccinated or otherwise at-risk workers in order to increase the distance between customers and such workers, if possible.
- Shift primary stocking activities of unvaccinated or otherwise at-risk workers to off-peak or after hours when possible to reduce contact between unvaccinated or otherwise at-risk workers and customers.

Unvaccinated and otherwise at-risk workers are also at risk when traveling to and from work in employer-provided buses and vans.

- Notify unvaccinated and otherwise at-risk workers of this risk and, to the extent feasible, help them limit the number of such workers in one vehicle.

- Make sure all unvaccinated and otherwise at-risk workers sharing a vehicle are wearing appropriate face coverings.

While OSHA notes that the guidance is advisory – unless referencing a specific mandatory standard – employers should carefully examine how the guidance informs their general duty under Section 5(a)(1) of the OSH Act to provide a safe workplace.

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Related Alerts:

- [Checklist for Employers Mulling Relaxing COVID-19 Safety Rules for Fully Vaccinated Employees](#) – 05/20/2021
- [Update on OSHA's COVID-19 National Emphasis Program and Enforcement](#) – 03/30/2021
- [OSHA Announces New National Emphasis Enforcement Program on COVID-19](#) – 03/15/2021
- [OSHA Issues Revised COVID-19 Guidance for Workplaces](#) – 02/02/2021
- [OSHA Reminds Employers to Continue Assessing Employee Safety Regarding COVID-19 Hazards, While Also Not Neglecting Common Workplace Hazards](#) – 6/17/2020
- [COVID-19 and OSHA: Why Employers May See More Inspection Activity and More Injuries and Illnesses Being Recorded as Work-Related](#) – 05/21/2020
- [Checklist Part II: OSHA and Safety Issues Regarding COVID-19 When Returning to Work](#) – 05/09/2020
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- [COVID-19 OSHA Guidance: Hazard Assessments at Workplaces Considered Essential Businesses Under Shelter in Place Orders](#) – 03/25/2020; Last Updated – 03/29/2020
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