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OSHA Updates COVID-19 Guidance to Mirror Recent CDC Recommendations

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On August 13, 2021, the Occupational Safety and Health Administration (“OSHA”) updated its COVID-19 guidance from June 10, 2021, which we discussed [here](#).

The updated [guidance](#) is designed to protect (a) unvaccinated (or not fully vaccinated) workers, (b) “at-risk” employees with certain underlying medical conditions, and (c) fully vaccinated employees who are located in geographic areas with substantial or high community transmission of COVID-19. In its updated guidance, OSHA recognizes that fully vaccinated individuals who do become infected with the Delta variant can be infectious and, in turn, can spread the virus to others. Consequently, OSHA is now adopting the CDC recommendations regarding testing and the wearing of face masks for fully vaccinated employees in certain circumstances. OSHA’s guidance also includes best practices for protecting unvaccinated or at-risk workers in higher-risk workplaces, which include: manufacturing; meat, seafood, and poultry processing; high-volume retail and grocery; and agricultural processing settings.

Additional Guidance on Earlier Recommendations

OSHA suggests that employers should engage with their employees (and their representatives) to determine how to implement multi-layered safety controls to protect unvaccinated and otherwise at-risk workers and to mitigate the spread of COVID-19, including suggesting that employers do the following:

- **Vaccination of employees.** Consider adopting policies that require employees to get vaccinated or to undergo regular COVID-19 testing. In addition to suggesting that employers consider a mandatory vaccine program (or a testing regime), the agency continues to note that employers should provide paid leave for employees taking time off to get vaccinated or to recover from any side effects associated with the vaccine.
- **Masking of employees.** Continue to provide employees with face masks or, where necessary, respirators, in addition to other PPE. OSHA has adopted the CDC recommendation that, in addition to unvaccinated and at-risk workers, fully vaccinated employees should also wear face masks in public indoor settings in geographic areas with substantial or high transmission of COVID-19. OSHA notes that employers should provide face coverings to workers who request them at no cost (and make replacements available to workers when they request them). Where respirators, including N95 face masks, are necessary (e.g., for certain jobs such as in healthcare where surgical face masks are insufficient) to protect employees from exposure to COVID-19, employers must provide such respirators in accordance with the relevant OSHA standards, which would include the implementation of a Respiratory Protection Program.
- **Masking of visitors.** Suggest or require that unvaccinated customers, visitors, or guests (over the age of 2) wear face coverings in public-facing workplaces such as retail establishments, and that all customers, visitors, or guests wear face coverings in public, indoor settings in areas of substantial or high transmission of COVID-19.

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- **Exposure, testing, and exclusion from the workplace.** Instruct all employees to stay at home and avoid the workplace if (a) they become infected with COVID-19, (b) they are unvaccinated and had close contact with someone who tested positive with COVID-19, or (c) they have COVID-19 symptoms. OSHA notes that fully vaccinated employees with a known exposure to COVID-19 should get tested 3-5 days after exposure and should wear face masks in public indoor settings for 14 days or until they receive a negative test result. Regarding employees who are not fully vaccinated, the guidance suggests that they should be tested immediately after being identified as having possible exposure to COVID-19 and, if negative, tested again in 5–7 days after their last exposure (or immediately if symptoms develop during quarantine). OSHA also notes that employers should (a) ensure that absence policies are non-punitive, and (b) eliminate or revise policies that encourage workers to come to work sick or when they (particularly unvaccinated workers) might have been exposed to COVID-19.
- **Physical distancing.** Implement physical distancing in all communal work areas for unvaccinated and at-risk workers. OSHA also recommends limiting the number of such employees in one place at any given time by, among other ways, implementing flexible worksite policies and staggered work hours. At fixed workstations where unvaccinated or otherwise at-risk employees are not able to remain at least 6 feet away from other each other, OSHA recommends that transparent shields or other solid barriers be used to separate these employees.

OSHA also continues to recommend that employers: (a) educate their employees on their COVID-19 policies in a language and format that is easily understood; (b) maintain adequate ventilation systems; (c) perform routine cleaning and disinfection; (d) prohibit retaliation and discrimination regarding the raising of workplace safety and health concerns; (e) report work-related COVID-19 cases to OSHA and record such cases on the OSHA 300 logs, subject to the recordkeeping criteria and OSHA's guidance on this topic; and (f) follow other applicable mandatory OSHA standards, such as requirements for PPE, respiratory protection, sanitation, and others.

Additional Guidance for Higher-Risk Workplaces with Mixed-Vaccination Status Employees

OSHA has also provided additional guidance for “higher-risk” workplaces, which include: manufacturing; meat, seafood, and poultry processing; high-volume retail and grocery; and agricultural processing settings. The agency notes that employers should take additional steps to mitigate the spread of COVID-19 among unvaccinated or otherwise at-risk employees due to the following types of workplace environmental factors found in such “higher-risk” workplaces, especially in locations of substantial or high transmission of COVID-19:

- **Close contact** - where unvaccinated or at-risk workers are working close to one another, such as in assembly lines or busy retail settings, or where workers are near each other during breaks or in locker/changing rooms.
- **Duration of contact** - where unvaccinated or at-risk workers have prolonged closeness to co-workers, i.e., 6-12 hours per shift.
- **Type of contact** - where unvaccinated and otherwise at-risk employees work in confined spaces without adequate ventilation, such as in a manufacturing or factory setting, or share closed spaces, such as break rooms and locker rooms.
- **Other factors** - where employer-provided transportation is used, such as ride-share vans or shuttle vehicles; frequent contact with other individuals in communities with substantial transmission rates; and communal housing among onboard vessels with other unvaccinated or at-risk individuals.

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In all such workplaces with heightened risk due to these workplace environmental factors, the new guidance recommends that employers:

- Stagger break times in high-population workplaces or provide temporary break areas and restrooms. OSHA notes that unvaccinated or at-risk employees should maintain at least 6 feet of distance from others at all times, including on breaks.
- Stagger workers' arrival and departure times.
- Provide visual cues as a reminder to maintain physical distancing.
- Require unvaccinated or at-risk employees, and also fully vaccinated employees in areas of substantial or high community transmission, to wear face masks. OSHA notes that employers should encourage and consider requiring customers and visitors to do the same.
- Improve ventilation as recommended by and addressed in various CDC and OSHA guidance.

This new guidance also addresses (a) specific controls for high-volume retail settings, (b) traveling in employer-provided buses or vans, and (c) additional controls for assembly line employees, such as in manufacturing or meat, poultry, and seafood processing.

Based on this updated guidance, employers should revisit their COVID-19 safety controls in their workplaces and where feasible, align them with OSHA's updated guidance for protecting the unvaccinated and otherwise at-risk workers. It also seems prudent to review how the OSHA guidance impacts safety controls for vaccinated workers, such as the suggestion that they should also wear face masks where COVID-19 is in substantial or high community transmission.

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- [OSHA Issues New Guidance for Protecting Unvaccinated or Otherwise At-risk Workers from Exposure to COVID-19](#) – 06/14/2021
- [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
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