

COVID-19 Legal Update

February 17, 2021

OSHA ISSUES NEW SAFETY GUIDANCE REGARDING COVID-19 IN THE WORKPLACE

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The Occupational Safety and Health Administration (“OSHA”) has issued a new workplace safety guidance for employers during the COVID-19 pandemic titled, “[Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#)” (the “Guidance”).

The Guidance is not mandatory and does not create any new legal obligations for employers. The Guidance only provides recommendations that are advisory in nature as well as descriptions of existing mandatory safety and health standards. Pursuant to the General Duty Clause under the Occupational Safety and Health Act, employers, however, are still required to provide a workplace free from any recognized hazards that are causing or likely to cause death or serious physical harm. Accordingly, employers, as part of their obligation to provide a safe and healthful workplace, should review the Guidance, which is intended to provide assistance in recognizing and abating hazards that are likely to cause death or serious physical harm.

OSHA Recommends Implementation of Workplace COVID-19 Prevention Program

The Guidance encourages employers to implement COVID-19 prevention programs in the workplace, as OSHA has taken the position that “implementing a workplace COVID-19 prevention program is the most effective way to mitigate the spread of COVID-19 at work.” The Guidance specifically recommends that a COVID-19 prevention program include the following 16 elements in order for the program to be effective:

1. assignment of a workplace coordinator who will be responsible for COVID-19 issues;
2. identification of where and how workers might be exposed to COVID-19 at work, including a [hazard assessment](#);
3. identification of a combination of measures that will limit the spread of COVID-19 in the workplace, including eliminating the hazard (e.g., by sending home infected or potentially infected people), engineering controls, policies, personal protective equipment (“PPE”), and other measures;
4. consideration of protections for workers at higher risk for severe illness (e.g., older adults and people of any age who have serious underlying medical conditions) through supportive policies and practices;
5. establishment of a system for communicating effectively with workers and in a language that they understand;
6. education and training of workers on COVID-19 policies and procedures using accessible formats and in a language they understand;
7. instructing workers who are infected or potentially infected to stay home and isolate or quarantine;
8. minimizing the negative impact of quarantine and isolation on workers (e.g., when possible, allowing workers to telework or in an area isolated from others);

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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 (including opening outside doors and windows to increase air circulation);
11. providing guidance on screening and testing in accordance with state/local guidance;
12. recording and reporting work-related COVID-19 infections and deaths;
13. implementation of worker 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 available at no cost to all eligible employees;
15. not distinguishing between workers who are vaccinated and those who are not (and requiring vaccinated workers to continue to follow protective measures); and
16. compliance with other applicable OSHA standards.

Existing OSHA Safety and Health Standards Remain Mandatory

Although OSHA does not have mandatory COVID-19-specific standards at this time, the Guidance reminds employers that existing [OSHA standards](#) remain in place. These mandatory safety and health standards generally protect workers from infection, including requirements for PPE, respiratory protection, sanitation, and protection from blood-borne pathogens.

Likely Next Steps for OSHA and Employers

OSHA has encouraged employers and workers to use the Guidance to help identify risks of being exposed to COVID-19 in the workplace and to determine any appropriate measures to implement. The Guidance will also likely remain relevant to OSHA's enforcement efforts. OSHA has [announced](#) that it will streamline the process for issuing COVID-19-related citations to employers, so that OSHA may issue citations more quickly. Moreover, the Biden administration has [ordered](#) OSHA to consider whether there is a need for federal COVID-19 standards (including with respect to masks in the workplace), and OSHA may issue a new federal COVID-19 emergency temporary standard in the near future.

For assistance navigating the mitigation and prevention of workplace safety hazards with respect to COVID-19, employers may want to review FVLD's *Legal Update*, "[FAQ: Returning to the Workplace in a COVID-19 World](#)", and consult with their legal counsel.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen at 312.701.6860 or jvegosen@fvldlaw.com, Cecilia M. Suh at 312.701.6841 or csuh@fvldlaw.com, or your regular FVLD contact.

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