

OSHA Issues Updated Guidance for Most Non-Health Care Employers and Businesses

June 16, 2021

By [Robert J. O'Hara](#), [Nathaniel M. Glasser](#), [Philip Lamborn](#), and [Jenna D. Russell](#)

On June 10, 2021, the Occupational Safety and Health Administration (“OSHA”) issued [updated guidance](#) (“Guidance”) for businesses and employers on COVID-19 prevention and mitigation in a post-vaccine workplace. This Guidance came on the same day that OSHA released an Emergency Temporary Standard (“ETS”) that applies only to health care workers (and is summarized [here](#)).

The Guidance focuses on protecting unvaccinated and otherwise at-risk employees (those who have received a vaccine but remain vulnerable) in the workplace. In keeping with recent Centers for Disease Control and Prevention (“CDC”) guidance, OSHA states that “[u]nless 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 employees who are not otherwise at-risk from COVID-19 exposure.”

Notably, the Guidance is not a standard or regulation, and it creates no new legal obligations. Instead, it provides recommendations and descriptions of existing CDC guidance, and reiterates numerous mandatory OSHA standards, such as requirements for personal protective equipment (“PPE”), respiratory protection, sanitation, and protection from bloodborne pathogens. Where the ETS does not apply, employers are still required under the General Duty Clause, [Section 5\(a\)\(1\)](#) of the federal Occupational Safety and Health Act, to provide a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

Employers and employees should use the Guidance as a tool to determine any appropriate control measures to implement. Below is a list of the most relevant parts of the Guidance.

Recommendations for Unvaccinated and At-Risk Employees

OSHA recommends that unvaccinated and at-risk employees should:

- get vaccinated;
- maintain physical distance (at least six feet), wear a face covering, wash their hands, and cover their nose and mouth when sneezing or coughing; and

- learn about workplace COVID-19 prevention programs, and consider taking advantage of telework or flexible schedule opportunities.

Recommendations for Employers

OSHA recommends that employers do the following:

- Grant paid time off to employees for vaccinations.
 - OSHA points out that employers with fewer than 500 employees may be eligible for tax credits under the American Rescue Plan Act.
- Instruct infected employees, unvaccinated employees in close contact with a COVID-19 individual, and those with COVID-19 symptoms to stay home.
- Implement physical distancing (at least six feet) for unvaccinated and at-risk employees in communal areas.
 - OSHA suggests minimizing contact through telework and flexible work hours where possible.
 - Where physical distancing is not possible, employers should use transparent shields or solid physical barriers.
- Provide face covers or surgical masks at no cost (unless respirators or other PPE is required by the position) to all unvaccinated workers, at-risk employees, or any employee who wants one.
 - Despite the requirements for unvaccinated and at-risk individuals to wear masks indoors, the Guidance suggests that masks are not required outdoors (unless mandated by state or local requirements).
- Train employees on your COVID-19 policies and procedures.
- Suggest that unvaccinated customers and visitors wear face coverings.
- Maintain adequate ventilation systems in order to maximize indoor ventilation.
- Perform routine cleaning and disinfection.
- Record and report COVID-19 infections and deaths.
- Set up an anonymous process to report COVID-19 health hazards.
- Comply with other applicable [COVID-19 OSHA standards](#).

Measures for Higher-Risk Workplaces

A “higher-risk workplace” designation is determined by weighing close contact between employees, duration of contact, types of contact, and other “distinctive factors,” such as employer-provided shared transportation, frequent contact with unvaccinated individuals

in areas with high community transmission, and communal employee housing. Examples given by OSHA include manufacturing, meat, poultry and seafood processing, and high-volume retail and grocery, but they could include others.

The Guidance recommends that higher-risk workplaces implement the following measures to decrease the risk of an outbreak:

- Stagger break times, and provide temporary break areas and restrooms to minimize interaction.
- For workplaces with assembly or processing lines, implement the use of proper spacing or use of barriers.
- For retail workplaces, provide masks for unvaccinated customers, ensure social distancing (or the use of barriers) among clients to protect their workers, and move the payment readers further away from employees.
- For retail businesses, shift primary stocking activities of unvaccinated/at-risk employees to off-peak or after hours.
- Notify employees on employer-provided shared transportation of COVID-19-associated risks, limit the number of riders, and ensure that unvaccinated employees/at-risk employees wear face coverings.

What Employers Should Do Now

Although the Guidance is not binding law, employers should consider adopting the recommendations to the extent possible, most of which are consistent with guidance from the CDC, the EEOC, and other government agencies and regulatory bodies. Taking good faith steps to comply with the Guidance likely will be viewed favorably by OSHA in the event of a future investigation, audit, or employee complaint.

For more information about this Advisory, please contact:

[Robert J. O'Hara](#)
New York
212-351-3708
rohara@ebglaw.com

[Nathaniel M. Glasser](#)
Washington, DC
202-861-1863
nklasser@ebglaw.com

[Philip Lamborn](#)
Los Angeles
310-557-9584
plamborn@ebglaw.com

[Jenna D. Russell](#)
New York
212-351-3717
jdrussell@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.

© 2021 Epstein Becker & Green, P.C.

Attorney Advertising