

COMPLIANCE BULLETIN



OSHA Updates Mitigation and Prevention Guidance for COVID-19

On June 10, 2021, the Occupational Safety and Health Administration (OSHA) updated its guidance on mitigating and preventing the spread of COVID-19 in the workplace. The guidance applies to employers and employees in settings outside of the health care industry and is now focused only on protecting unvaccinated or otherwise at-risk employees in their workplaces.

Employers can use this OSHA guidance to help them take the appropriate steps to prevent exposure and infection of unvaccinated or otherwise at-risk employees.

According to OSHA, most employers no longer need to take steps to protect their fully vaccinated employees who are otherwise not at risk from COVID-19 exposure unless otherwise required by federal, state or local laws.

This guidance contains recommendations as well as descriptions of **mandatory safety and health standards**, which are labeled "mandatory OSHA standard(s)" in bold. The recommendations are advisory in nature, informational in content and intended to provide a safe and healthy workplace free from recognized hazards that are causing or likely to cause death or serious physical harm. This Compliance Bulletin reviews the OSHA recommendations for unvaccinated or otherwise at-risk employees.

Action Steps

Under the guidance, employers with unvaccinated or otherwise at-risk employees should update their COVID-19 prevention plans to provide policies and procedures for those specific employees to follow. Employers should also review the guidance for vaccinated employees working with unvaccinated employees and update their policies and procedures accordingly.

Guidance Topics

The OSHA guidance covers:

- ✓ Measures to limit the spread of COVID-19;
- ✓ Isolation or separation measures for unvaccinated or otherwise at-risk employees;
- ✓ Use of personal protective equipment; and
- ✓ Improvements in ventilation, hygiene and sanitation measures.

Important Information

- ✓ The guidance contains recommendations, but also includes the **mandatory safety and health standards** that have already been established.
- ✓ The recommendations are advisory in nature, informational in content and are intended to assist employers in providing a safe and healthy workplace.



JP Griffin Group



COVID-19 Prevention Program

OSHA asserts that the most effective way to mitigate the spread of COVID-19 at work is for employers to implement a workplace prevention program. For this reason, OSHA provides this guidance for employers as recommendations to use in protecting unvaccinated or at-risk employees. Employers and employees should use this guidance to determine which appropriate control measures to implement within their workplace to protect against spreading COVID-19.

If a workplace has fully vaccinated employees, OSHA recommends the employer follow the U.S. Centers for Disease Control and Prevention (CDC) [Interim Public Health Recommendations for Fully Vaccinated People](#). These recommendations explain when fully vaccinated people need to take the same precautions that unvaccinated employees should take.

Employers with unvaccinated or at-risk employees should follow the recommended precautions and policies at their workplace. OSHA's guidance outlines key elements for an effective COVID-19 prevention program for those that are unvaccinated and otherwise at-risk, as described in the sections below.

Multi-layered Interventions

Under the guidance, employers should engage with employees and their representatives to determine how to implement multi-layered interventions to protect unvaccinated or otherwise at-risk employees and mitigate the spread of COVID-19.

Some of these interventions include:

- ☑ Granting paid time off for employees to get vaccinated;
- ☑ Instructing employees who test positive, or have symptoms or have been exposed to someone with a positive COVID-19 test to stay home;
- ☑ Implementing physical distancing for unvaccinated and at-risk employees in communal areas;
- ☑ Providing unvaccinated and at-risk employees with face coverings and personal protective equipment (PPE) if required;
- ☑ Educating and training employees on COVID-19 policies and procedures;
- ☑ Suggesting that unvaccinated customers, visitors or guests wear face coverings;
- ☑ Maintaining ventilation systems;
- ☑ Cleaning and disinfecting work areas;
- ☑ Recording and reporting COVID-19 infections and deaths; and
- ☑ Implementing retaliation protections.

At-risk employees are those who do not have a full immune response to the vaccination due to weakened immune systems from underlying medical conditions.

Vaccinations

Under the guidance, employers should take steps to make it easier for workers to get vaccinated. OSHA and other federal agencies are working diligently to ensure access to COVID-19 vaccinations. Businesses with fewer than 500 employees may be eligible for [tax credits under the American Rescue Plan](#) if they provide paid time off for employees who decide to receive the vaccine or need to recover from vaccination side effects.



Removal From the Workplace

To prevent the spread and risk of transmitting COVID-19, the guidance instructs that employers should require employees to stay or work from home if they are infected, unvaccinated and have had close contact with someone who has tested positive for COVID-19, or exhibit COVID-19 symptoms. Employers should ensure that these removal policies are non-punitive. Similarly, employers should eliminate or revise policies that encourage employees to come to work sick or after they have been exposed to COVID-19 (if unvaccinated).

Businesses **with fewer than 500 employees** may be eligible for refundable tax credits under the American Rescue Plan if they provide paid time off for sick and family leave to their employees due to COVID-19 related reasons. The ARP tax credits are available to eligible employers that provide paid sick and family leave for qualified leave from April 1, 2021, through Sept. 30, 2021.

Physical Distancing

A key way to protect unvaccinated or otherwise at-risk employees is for employers to physically distance these employees from other unvaccinated or otherwise at-risk individuals (employees, visitors, contractors, vendors, customers). Generally, at least six 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 employees in one place at any given time by:

- Implementing flexible worksites, such as telework;
- Implementing flexible work hours by rotating or staggering shifts to limit the number of such employees in the workplace at the same time;
- Delivering services remotely; or
- Implementing flexible meeting and travel options, all for such employees.

At fixed workstations where unvaccinated or otherwise at-risk employees are not able to remain at least 6 feet away from other people, transparent shields or other solid barriers (for example, fire-resistant plastic sheeting or flexible strip curtains) can separate these employees from others. Barriers should block face-to-face pathways between individuals to prevent direct transmission of respiratory droplets, and any openings should be placed at the bottom and made as small as possible. The posture (sitting or standing) of users and the safety of the work environment should be considered when designing and installing barriers, as should the need for enhanced ventilation.

Face Coverings

Employers should provide face coverings to unvaccinated and otherwise at-risk employees at no cost to the employees. Under federal anti-discrimination laws, employers may need to provide reasonable accommodations under Title VII of the Civil Rights Act for employees who are unable to wear or have difficulty wearing certain types of face coverings due to a disability or religious reasons. In workplaces with employees who are deaf or hard of hearing, employers should consider acquiring masks that facilitate lip-reading.

Unvaccinated and otherwise at-risk employees should wear a face covering that covers the nose and mouth to contain the wearer's respiratory droplets. Properly wearing adequate face coverings protects the wearer and others. 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. They should fit snugly over the nose, mouth and chin, with no large gaps on the outside of the face. The CDC provides [general guidance on face coverings and masks](#).

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, such as if they are immunocompromised. Regardless, all workers should be supported to continue face-covering use if they choose, especially to work closely with other people safely.

For operations where the face covering can become wet and soiled, employers must provide unvaccinated and otherwise at-risk employees with replacements daily or more frequently, as needed. Face shields may be provided for use with face coverings to protect them from getting wet and soiled, but they do not provide protection by themselves.

In settings where face coverings may increase the [risk of heat-related illness](#), whether [indoors](#) or [outdoors](#), or cause safety concerns due to the introduction of a hazard, employers may wish to consult with an occupational safety and health professional to help determine appropriate face covering or respirator use.

In public-facing workplaces such as retail establishments, if there are unvaccinated or otherwise at-risk employees in the workplace who are likely to interact with customers, visitors or guests, the employer should suggest that face coverings should be worn. This can be done by posting a notice or otherwise suggesting unvaccinated people wear face coverings, even if no longer required by your jurisdiction. Individuals who are under the age of 2 or are actively consuming food or beverages on-site do not need to wear face coverings.

Personal Protective Equipment

When an employer determines that PPE is necessary to protect unvaccinated and otherwise at-risk employees, the employer must provide PPE in accordance with relevant **mandatory OSHA [standards](#)** and consider providing PPE in adherence to other [industry-specific guidance](#).

Respirators, if necessary, must be provided and used in compliance with 29 CFR [1910.134](#) (for example, medical determination, fit testing and training on its correct use), including certain provisions for voluntary use when workers supply their own respirators. Other PPE must be provided and used in accordance with the applicable standards in 29 CFR 1910, Subpart I (e.g., [1910.132](#) and [133](#)).

There are times when PPE is not called for by OSHA standards or other industry-specific guidance, but some workers may have a legal right to PPE as a reasonable accommodation under the Americans with Disabilities Act (ADA). Employers are encouraged to proactively inform these employees about how to make such a request.

Other workers may want to use PPE if they are still concerned about their personal safety (e.g., if a family member is at a higher risk for severe illness, they may want to wear a face shield in addition to a face covering as an added layer of protection). Encourage and support voluntary use of PPE in these circumstances and ensure the equipment is adequate to protect the worker.

Education and Training

Under the guidance, employers should train their managers on how to implement COVID-19 policies. Supportive workplace policies should be communicated clearly, frequently and via multiple methods to promote a safe and healthy workplace. Communications should be in plain language so employees can understand. Employers may need to consider

COMPLIANCE BULLETIN



providing education and training in other languages, including American Sign Language. As applicable, employers should also consider methods to make education and training accessible to individuals with disabilities.

Education and training should be directed to employees, contractors and any other individuals on site. Education and training should include:

- Basic facts about COVID-19, including how it is spread and transmitted;
- The importance of physical distancing, including remote work;
- Ventilation;
- Vaccination;
- Use of face coverings;
- Hand hygiene; and
- Workplace policies and procedures implemented to protect employees from COVID-19 hazards.

Ventilation Systems

Improving ventilation indoors is a key engineering control that can be used as part of a layered strategy to reduce the concentration of viral particles in indoor air and the risk of virus transmission to unvaccinated employees in particular. Some measures to improve ventilation are discussed in the [CDC's Ventilation in Buildings](#) and in the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#). These recommendations are based on [ASHRAE Guidance for Building Operations During the COVID-19 Pandemic](#). Adequate ventilation will protect all people in a closed space.

Key measures include:

- Ensuring the HVAC system is operating in accordance with the manufacturer's instructions and design specifications;
- Conducting all regularly scheduled inspections and maintenance procedures;
- Maximizing the amount of outside air supplied;
- Installing air filters with a [Minimum Efficiency Reporting Value \(MERV\) 13](#) or higher, where feasible;
- Maximizing natural ventilation in buildings without HVAC systems by opening windows or doors, when conditions allow (if that does not pose a safety risk); and
- Considering the use of portable air cleaners with High-Efficiency Particulate Air (HEPA) filters in spaces with high occupancy or limited ventilation.

Cleaning and Disinfection Protocol

If an employee, customer or visitor who has been in the facility within 24 hours is [suspected of having or confirmed to have COVID-19](#), follow the CDC [cleaning and disinfection recommendations](#). Employers must follow requirements in the **mandatory OSHA standards** for [hazard communication](#) and [PPE](#) appropriate for exposure to cleaning chemicals.

Reporting and Recording COVID-19 Cases

Under **mandatory OSHA standards in 29 CFR 1904**, employers are responsible for recording work-related cases of COVID-19 illness on OSHA's [Form 300 logs](#) if the following requirements are met:

- The case is a confirmed case of COVID-19;

COMPLIANCE BULLETIN



- ☑ The case is work-related (as defined by 29 CFR 1904.5); and
- ☑ The case involves one or more relevant recording criteria (set forth in 29 CFR 1904.7) (for example, medical treatment, days away from work).

Employers must follow the OSHA standard Recordkeeping Forms and Recording Criteria (29 CFR 1904) when reporting COVID-19 fatalities and hospitalizations to OSHA. Employers should also report outbreaks to their health department as required and support their contact tracing efforts.

However, OSHA and other federal agencies are working diligently to encourage COVID-19 vaccinations. OSHA does not want to give any suggestion of discouraging employees from receiving COVID-19 vaccination or disincentivizing employers' vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. OSHA will reevaluate the agency's position at that time to determine the best course of action moving forward. Individuals may choose to submit adverse reactions to the federal Vaccine Adverse Event Reporting System.

Retaliation Protections

Employers should be aware that OSHA prohibits reprisal or discrimination against an employee for speaking out about unsafe working conditions or reporting an infection or exposure to COVID-19 to an employer. In addition, the **mandatory OSHA standard** for employee involvement (29 CFR 1904.35(b)) also prohibits discrimination against an employee for reporting a work-related illness.

Under Section 11(c) of the OSH Act, discharging or in any other way discriminating against an employee for engaging in various occupational safety and health activities is prohibited. Examples of violations could include:

- Discriminating against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency or to the public, such as through print, online, social or any other media; or
- Discriminating against an employee for voluntarily providing and safely wearing their own PPE, such as a respirator, face shield, gloves, or surgical mask.

In addition to notifying employees of their rights to a safe and healthful work environment, employers should ensure that employees know whom to contact with questions or concerns about workplace safety and health. Employees should also be informed that there are prohibitions against retaliation for raising workplace safety and health concerns or engaging in other protected occupational safety and health activities. Employers can also consider using a hotline or other method for employees to voice concerns anonymously.

Safety Measures for High-risk Workplaces With Mixed Vaccination Employees

Employers should take additional steps to mitigate the spread of COVID-19 for unvaccinated and otherwise at-risk employees in workplaces. High-risk workplaces are those that have a heightened risk of infection due to the following factors:

- Close contact;
- Prolonged duration of contact;
- Type of contact (for example, airborne droplets or contaminated surfaces);
- Employer-provided transportation; and



- Communal housing.

In high-risk workplaces like manufacturing, meat and poultry processing, high-volume retail, and grocery and seafood-processing establishments, employers should use best practices to protect unvaccinated or otherwise high-risk employees. These recommendations are in addition to the precautions described above.

Employers can stagger break times in these generally high-population workplaces or provide temporary break areas and restrooms to avoid groups of unvaccinated or at-risk employees congregating during breaks. Unvaccinated or at-risk employees should maintain at least 6 feet of distance at all times. Arrival and departure times can also be staggered to avoid congregations of unvaccinated or at-risk employees in parking areas, locker rooms and near time clocks. Employers can use visual cues to help keep employees physically distanced.

Employers should limit, if possible, unvaccinated or at-risk employees in vehicles. These employees should be told of the risks of traveling with others closely in the vehicle and should wear appropriate face coverings when in a vehicle with others.

Employers should implement strategies tailored to their workplace to improve ventilation that protects employees as outlined in the CDC's [Ventilation in Buildings](#) and the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#).

Processing or Assembly Line Precautions

Proper spacing of unvaccinated or at-risk employees can help reduce the risk of virus exposure because these workplaces have often been designed for a number of employees to stand next to or across from each other to maximize productivity.

Retail Workplaces

Employers should suggest masks for unvaccinated (or unknown status) customers or visitors. Physical distancing should be used if possible from people who are not known to be fully vaccinated. If this is not possible, then employers should consider the use of barriers between work stations for the unvaccinated or at-risk employees and for the locations customers will stand, with pass-through openings at the bottom, if applicable.

Employers can move the electronic payment terminal (credit card reader) farther away from unvaccinated or at-risk employees to increase the distance between customers and such employees, if possible. Primary stocking activities can be shifted for unvaccinated or at-risk employees to off-peak or after-hour times to reduce contact between unvaccinated or otherwise at-risk employees and customers.

Source: [Occupational Safety and Health Administration](#)