



OSHA RELEASES NEW GUIDANCE

February 2021

As mandated in President Biden's [Executive Order on Protecting Worker Health and Safety](#), OSHA announced its revised guidance entitled, [Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#) (<https://www.osha.gov/coronavirus/safework>).

This is OSHA's first comprehensive workplace guidance since June of 2020, which is a framework and a reminder to employers that policies should be implemented and considered living documents that are updated as new or modified information becomes available.

OSHA's revised guidance identifies several key elements of the COVID-19 prevention program recommended previously and reaffirms that the prevention program is the most effective method of reducing the spread of the virus. The key elements include the following:

- **Workplace coordinator:** Assign a workplace coordinator who is responsible for COVID-19 issues on the employer's behalf.
- **Hazard assessment:** Conduct a thorough hazard assessment to identify where and how employees might be exposed to COVID-19 at work, with input from employees and their representatives.
- **Hierarchy of controls:** Apply OSHA's "hierarchy of controls" to identify effective engineering controls, workplace administrative controls and the use of personal protective equipment (PPE).
- **Telework and other supportive policies for high risk employees:** Consider additional protections for employees at higher risk for severe illness through supportive policies and practices, including allowing telework arrangements and reasonable accommodations for employees with disabilities.
- **Two-way communications system:** Adopt a two-way communications system, in language and formats that employees can understand, for employees to report COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards in the workplace and for the employer to use to notify employees of exposures and closures.

- **Employee, contractor and visitor education and training:** Educate and train employees, contractors and other onsite visitors on the employer's COVID-19 policies and procedures, again using format(s) and language(s) that those stakeholders can understand.
- **Non-punitive attendance policies:** Instruct employees who are infected or potentially infected to stay home and isolate or quarantine to prevent or reduce the risk of transmission of COVID-19, modifying attendance policies as necessary to ensure that they are non-punitive.
- **Use of paid leave benefits for isolated and quarantined employees:** Minimize the negative impact of quarantine and isolation on employees, allowing them to telework when possible or to use available paid leave, including leave previously available under the Families First Coronavirus Response Act (FFCRA).
- **Employee screening and testing:** Follow state and local guidance on workplace COVID-19 and provide employees with available information on available screening and testing in the community
- **OSHA recording and reporting:** Accurately record and report COVID-19 infections and deaths.
- **Employee vaccines:** Make COVID-19 vaccinations available at no cost to all eligible employees and provide information and training on the benefits and safety of vaccinations.
- **Strict COVID safety compliance even for vaccinated employees:** Do not distinguish between employees who are vaccinated and those who are not. OSHA cautions that vaccinated employees must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not clear evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person.

What does this mean for employers? OSHA made clear that the “recommendations are advisory in nature [and] informational in content.” However, employers should consider implementing the COVID-19 prevention program to help reduce the spread of the virus and to minimize liability based on employee complaints. At the time of this post, there are approximately 26.5M Covid cases in the U.S. and OSHA has announced more than 300 inspections resulting from citations and proposed penalties of nearly \$4 million. Employers should also understand the implications of the program beyond workplace safety related to state and federal laws, such as the Americans With Disabilities Act and the Family and Medical Leave Act.



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