Kilpatrick

Insights: Alerts

OSHA Issues Updated Employer Guidance on COVID-19 Mitigation and Prevention

JUNE 14, 2021 Written by John W. Alden

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Resource Center page and/or your email for updates.

On June 10, 2021, the Occupational Safety and Health Commission ("OSHA") published updated guidance for employers on mitigating and preventing the spread of COVID-19 in the workplace. This includes the long-awaited COVID-19 emergency temporary standard ("COVID-19 ETS"), which is designed to protect employees who face the highest risk of workplace COVID-19 exposure—employees in healthcare settings such as hospitals, nursing homes, and assisted living facilities; emergency responders, home healthcare workers, and employees in ambulatory care facilities. In addition, on the heels of the Centers for Disease Control and Prevention's ("CDC") recent guidance that fully vaccinated people may resume activities without wearing masks or physically distancing (except where required by applicable law or local business or workplace guidance) (our Alert on the topic is here), OSHA has issued updated guidance for employers who are not covered by the ETS that focuses on protecting unvaccinated or otherwise at-risk employees. This updated guidance is particularly relevant in industries where prolonged close contact with customers or other employees is common, such as meat and seafood processing, manufacturing, grocery, and high-volume retail.

OSHA Imposes COVID-19 Requirements on Healthcare Employers

The COVID-19 ETS imposes several requirements on employers in the healthcare setting, such as:

- Developing and implementing a COVID-19 plan for each workplace that includes a designated workplace safety coordinator, a workplace specific hazard assessment, ongoing monitoring, and policies and procedures to minimize the risk of COVID-19 to employees.
- Removing employees who test positive for COVID-19, are suspected of being infected, or are symptomatic from the workplace and, in certain circumstances, placing the affected employee on paid leave until the employee meets specified return-to-work criteria.
- Supporting COVID-19 vaccinations by providing reasonable time and paid leave to each employee for vaccination and any related side effects.
- Continued physical distancing, installation of physical barriers, ventilation, and cleaning and disinfection of surfaces and equipment in accordance with CDC guidance.

The complete set of requirements for healthcare employers is set out in the COVID-19 ETS, which can be accessed at https://www.osha.gov/coronavirus/ets. Fully-vaccinated employees are not required to comply with face-covering, distancing, and barrier requirements if they are in "well-defined" areas where there is no reasonable expectation

that a person with suspected or confirmed COVID-19 will be present. The COVID-19 ETS goes into effect on the date that it is published in the Federal Register. Covered employers must comply with all ETS provisions, except those related to physical barriers, ventilation, and training, within 14 days of publication; the compliance deadline for the remaining requirements is 30 days after publication. As of this email alert, the publication date has not yet been determined.

OSHA Urges All Other Employers to Promote Vaccinations and Protect Unvaccinated/At-Risk Workers

Though the COVID-19 ETS appears to be receiving the most attention, OSHA has also published COVID-19 guidance directed at employers who are not covered by the COVID-19 ETS. The updated guidance urges employers to promote COVID-19 vaccinations and take steps to protect unvaccinated and at-risk workers. ("At-risk" workers include individuals who have medical conditions that may impact their ability to develop a full immune response to vaccination, such as a prior transplant or prolonged use of immunosuppressant medications.) OSHA's recommendations include:

- Implementing physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas.
- Providing unvaccinated and otherwise at-risk employers with face coverings or surgical masks, unless their work task requires a respirator or other personal protective equipment.
- Suggesting that unvaccinated customers, visitors, or guests wear face coverings.
- Staggering worker break times, arrival times, and departure times to avoid groups of unvaccinated or at-risk workers congregating in communal areas.

The updated guidance, including additional measures to mitigate COVID-19 exposure in higher risk workplaces with employees of varying vaccination status, is accessible at https://www.osha.gov/coronavirus/safework.

Conclusion

As with all things COVID-19 related, employers should carefully consider their COVID-19 policies and practices to ensure continued compliance with the ever changing best available guidance. We will continue to monitor the situation and update as necessary. Employers with specific questions about the impact of the OSHA ETS and COVID-19 guidance should reach out to the team at Kilpatrick Townsend or their employment law counsel for more information.

Related People



John W. Alden
t 404.815.6058
jalden@ktslaw.com