

OSHA issues updated guidance on workplace COVID-19 prevention programs

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The Occupational Safety and Health Administration (“OSHA”) published updated COVID-19 guidance for businesses on Friday, Jan. 29, 2021. The guidance, [*Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*](#), (“Guidance”) outlines obligations for employers to comply with OSHA’s General Duty Clause during the pandemic and draws on previously published OSHA and Centers for Disease Control guidance.^[1] OSHA emphasizes the need for employers’ to plan and prepare to protect employees in the workplace from COVID-19. The *Guidance* states that it does not create any new legal requirements for employers, but instead provides more detail on “existing mandatory safety and health standards.” OSHA implies the *Guidance* may be used for purposes of enforcing employer compliance with COVID-19 prevention programs.

OSHA recommends employers include employees in the development of company prevention programs. OSHA takes a stronger stance

on masking requirements for employees and anyone entering the workplace, physical distancing of employees and non-employees, installing barriers to protect employees, and improved ventilation to prevent the spread of COVID-19 in buildings.

OSHA considers the following to be essential to an effective COVID-19 prevention program. Many of these elements have been in place for employers for several months. Companies can benefit from documenting these elements to ensure a cohesive and complete COVID-19 prevention program. A comprehensive COVID-19 Prevention Program should address the following elements:



1. Assignment of a workplace coordinator, centralizing responsibility and communication from the company to employees regarding COVID-19 issues.
2. A Company assessment of hazards in order to identify where and how workers might be exposed in the workplace.
3. Identify the combination of measures that will limit the spread of COVID-19 in the workplace, which includes prioritizing what controls are most effective and least effective. For example, sending home people with a known exposure, physical distancing, improving ventilation, and cleaning routines. The *Guidance* states face coverings should include “at least two layers of tightly woven fabric” and “Employers should provide face coverings to workers at no cost”.
4. Consider protections for workers at higher risk for severe illness through supportive policies and practices. This element may overlap with an employer’s federal obligations under the Americans with Disabilities Act, Family Medical Leave Act, or state

statutory obligations for accommodating disabled employees to protect them from the risk of contracting COVID-19.

5. Establish a system for communicating effectively with workers in a language they understand. This includes communicating to employees about COVID-19 hazards and a method for employers to receive communications from employees, without fear of reprisal or discrimination. The communication plan should allow employees to report illness, exposures, hazards, and closures related to COVID-19.
6. Educate and train workers on company COVID-19 policies and procedures using accessible formats and in a language employees understand. This includes education on COVID-19, prevention policies, and making sure employees understand their rights to a safe and healthful work environment.
7. Instruct workers who are infected or have potential exposure to stay home, isolate or quarantine to prevent or reduce the risk of spreading COVID-19. OSHA states that absences to prevent or reduce the spread of COVID-19 should be non-punitive.
8. Minimize the negative impact of quarantine and isolation on workers. OSHA believes this can be achieved by employers permitting remote work or allowing employees to work in areas isolated from others. OSHA also encourages implementation, or allowing the use of, paid sick leave policies for time off work. In some states employees may be entitled to COVID-19 related leave. Although the paid leave requirements in the Families First Coronavirus Response Act expired on December 31, 2020, employers may continue these leave policies and can find more information here [\[insert link to PM article\]](#). Employers should continue to watch for further changes in federal and state paid leave requirements in 2021.
9. Isolate, send home and encourage medical attention for

employees who show symptoms.

10. Perform enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility. This may include closing areas, opening doors or windows, waiting to clean, and using disinfectants appropriate to clean COVID-19.
11. Provide state and local guidance on screening and testing.
12. Record and report COVID-19 infections and deaths on the company's Form 300 logs according to OSHA standards. Outbreaks should also be reported to the local health department for contact tracing. Employers are also prohibited from retaliating or discriminating against employees who speak out about unsafe working conditions or report infection or exposure to COVID-19 in the workplace.
13. Implement protections from retaliation and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.
14. Make a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.
15. Employers should not distinguish between workers who are vaccinated and those who are not. This means that vaccinated employees must still comply with all COVID-19 protective policies including but not limited to physical distancing, masking, and other steps necessary to limit transmission.
16. Apply all other applicable OSHA standards and requirements (i.e. respiratory protection, sanitation, etc.) to ensure that the company provides a safe and healthful work environment free from recognized hazards that can cause serious physical harm or death.

The *Guidance* provides additional detail for implementing these essential elements to a COVID-19 prevention program, including procedures for isolating infected or potentially infected employees, physical distancing guidelines, physical barrier

guidelines, face coverings, cleaning and ventilation improvements.

This OSHA *Guidance* is likely the first of many updates to COVID-19 prevention procedures for employers in 2021. Employers should review the full [Guidance](#) for more information on COVID-19 prevention programs and keep watch for more information from OSHA, the U.S. Department of Labor, and the Equal Employment Opportunity Commission regarding employer obligations.

[1] The General Duty Clause requires employers to provide employees with a work environment “free from recognized hazards that are causing or likely to cause death or serious physical harm.” OSH Act of 1970, §5(a).

Phillips Murrah’s labor and employment attorneys continue to monitor developments to provide up-to-date advice to our clients during the current COVID-19 pandemic.

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