

# The Wait Is Over and It's Good News: OSHA Releases General Industry Guidance for COVID-19 ?

Labor & Employment Workforce Watch

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The day after President Joe Biden was inaugurated in January 2021, he issued an [Executive Order on Protecting Worker Health and Safety](#), which directed the Occupational Safety and Health Administration (OSHA) to consider whether it was necessary to issue an emergency temporary standard (ETS) regarding workplace safety during the COVID-19 pandemic. The importance of an ETS is that it imposes legal obligations on employers to comply. Employers waited anxiously for several weeks for OSHA to act. OSHA delivered the COVID-19 ETS to the Office of Management and Budget (OMB) on April 26, 2021 for final regulatory review before issuance. OSHA did not release a draft of its COVID-19 ETS for public review, but OMB solicited stakeholders' comments on the unseen ETS from unions, trade associations, and employers. Many strongly believed for several weeks that OSHA's COVID-19 ETS would apply to all employers and industries.

On June 10, 2021, OSHA released the long-awaited [ETS](#), but limited its application to healthcare workers, while providing [general industry guidance](#) to other employers. This comes as good news for non-healthcare sector employers, who may no longer need to implement additional COVID-19 safety precautions beyond what they already have in place. Some employers may even be able to relax their policies and procedures depending on the vaccination status of their workforce.

OSHA's general industry guidance on COVID-19 did not contain any surprises regarding what employers should be doing to protect their workers, because it was consistent with multiple guidance publications OSHA issued since April of 2020. The new guidance did, however, provide much needed clarification on what steps employers need to take as to fully vaccinated workers. OSHA clarified that "most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure," defining "at-risk workers" as those workers who based on "some conditions, such as a prior transplant, as well as prolonged use of corticosteroids or other immune-weakening medications" may not "have a full immune response to vaccination." The guidance also stated that it was "not a standard or regulation, and it creates no new legal obligations." Rather, the guidance is only intended to be "advisory in nature and informational in content," containing "recommendations as well as descriptions of existing mandatory OSHA standards."

The remainder of OSHA's COVID-19 guidance reiterates what employers should continue to do to protect unvaccinated and at-risk workers, which steps include:

- Grant paid time off for unvaccinated employees to get vaccinated, in an effort to ensure access to COVID-19 vaccinations;
- Ensure they wear a properly fitted face covering over their nose and mouth, which the employer should make

available at no cost to employees;

- Maintain social distancing measures (*i.e.*, at least 6 feet apart) and, to the extent this will be difficult to ensure, consider appropriate measures such as implementing barriers between certain workstations, teleworking, rotating or staggering work schedules, providing flexible work hours, and providing flexible meeting options (*e.g.*, zoom meetings);
- Inform all employees—including vaccinated employees—to stay home if they are currently infected with COVID-19 or have symptoms of COVID-19, and inform unvaccinated employees they should also stay home if they have had close contact with someone who tested positive for COVID-19;
- Educate and train workers on the employer's COVID-19 policies and procedures, including ensuring workers understand their rights to a safe and healthful work environment, who to contact with questions or concerns about workplace safety and health, and their right to raise workplace safety and health concerns free from retaliation;
- Ensure supervisors are familiar with any flexible work arrangements and other policies and procedures that are established by the employer;
- Require or recommend that unvaccinated customers, visitors, and guests wear face coverings;
- Perform routine cleaning and disinfection, especially if someone who has been in the facility within 24 hours is suspected of having, or confirmed to have, COVID-19;
- Continue to record and report COVID-19 infections and death on the employer's OSHA 300 log if the infection or death is "work-related" as defined by 29 CFR 1904.5 (this does not include recording adverse reactions to vaccines, which OSHA has suspended until at least May of 2022); and
- Continue to follow other applicable mandatory OSHA standards.

In addition to the above general workplace guidance, OSHA provides employers in industries posing a higher risk for exposure to or spread of COVID-19 (such as manufacturing, meat and poultry processing, high-volume retail and grocery, and seafood processing) with [specific industry guidance](#).

Despite OSHA opting to provide non-healthcare employers with updated guidance rather than imposing an ETS, employers must remember that OSHA still considers COVID-19 matters to be an agency priority. As discussed in our recent article, [OSHA Ramps-up COVID-19 Inspections and Enforcement](#), OSHA instituted a National Emphasis Program on COVID-19 on March 12, 2021. Thus, OSHA will continue to ask employers about COVID infections and prevention policies during its inspections of any safety matter.

Employers should review and update their COVID-19 policies as necessary based on OSHA's new general industry guidance. Employers who are already taking the above precautions may now consider relaxing their policies as applied to fully vaccinated workers, especially in the areas of masks and social distancing. Employers should keep in mind that their policies must also comply with any other federal, state, local, tribal, or territorial laws, rules, and regulations, which may have stricter requirements. Employers should also be aware of other workplace issues that may arise such as requests for accommodations under the Americans with Disabilities Act or religious accommodations. Finally, employers must ensure that they maintain zero tolerance policies for harassment, bullying or retaliation involving matters such as vaccinations, employee mask wearing, social distancing, or adhering to other COVID-19 prevention measures.

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