

New OSHA Guidance: Recommended Protective Measures for Non-Health Care Employers

Related Practices

COVID-19 Task Force
Employment Law and Litigation

By Peabody & Arnold on February 22, 2021

On January 29, 2021, the Occupational Safety and Health Administration (“OSHA”) issued new guidance (“[OSHA guidance](#)”) to assist employers and workers in non-healthcare settings to mitigate and prevent the spread of COVID-19 in the workplace. Although OSHA’s guidance is advisory in nature, and does not create new legal obligations, there may be state and/or local executive orders and directives that employers are required to follow. Therefore, employers must continue to stay up to date with state and local requirements to determine what measures must be implemented in their workplaces or should be implemented as a matter of best practice.

This post provides only an overview of some of the key recommendations from OSHA. Employers are urged to consult with counsel as they develop COVID-19-related policies and procedures.

COVID-19 Prevention Programs

According to the OSHA guidance, the most effective way to mitigate the spread of COVID-19 at work is to implement a workplace COVID-19 prevention program. OSHA advises that the most effective COVID-19 prevention programs engage workers in their development and implementation at every step and include the following recommended measures:

- Assigning a workplace coordinator who will be responsible for addressing COVID-19 issues on behalf of the employer;
- Identifying where and how workers might be exposed to COVID-19 by conducting a hazard assessment of the workplace;
- Identifying measures that will limit the spread of COVID-19 in the workplace, such as eliminating hazards, implementing engineering controls and administrative policies, and providing employees with applicable personal protective equipment (“PPE”) and/or face coverings;
- Providing reasonable modifications to workers who are at higher risk for severe illness through supportive policies and practices;
- Establishing a communication system for employees to report, without the fear of retaliation, COVID-19 symptoms, exposures, and possible COVID-19 hazards at the workplace;
- Educating and training employees on COVID-19 policies and procedures;
- Instructing employees who are infected or potentially infected with COVID-19 to stay home and isolate or quarantine;
- Minimizing the negative impact of isolation and quarantine on workers where possible by allowing telework or implementing flexible leave policies;

- Implementing screening assessments in accordance with state and local guidance and excluding or isolating symptomatic employees from the workplace;
- Cleaning and disinfecting the workplace following a suspected or confirmed case of COVID-19 in the workplace in accordance with guidance from the Centers for Disease Control and Prevention (“CDC”);
- Providing guidance on COVID-19 symptom screenings, testing, and vaccinations;
- Requiring vaccinated employees to continue to follow COVID-19 protective measures; and
- Following all other applicable OSHA standards to protect workers from infection.

Additional Detail on Key Measures – Isolation and Quarantine

Employees who are infected or potentially infected with COVID-19 pose a very real hazard to the workplace because of the highly contagious nature of the SARS-CoV-2 virus. OSHA recommends that employers work to eliminate the hazard by identifying and excluding workers who are infected or potentially infected with COVID-19 and following CDC and local guidelines for isolation and/or quarantine.

Isolation – Employees with COVID-19 and/or COVID-19 Symptoms

According to the OSHA guidance, employees who either have or likely have COVID-19 should be excluded from work and isolate until they meet the CDC guidelines for discontinuing isolation. In most cases, employees who think or know they have COVID-19 and had symptoms of COVID-19 should not return to work until:

- At least 10 days have passed since the employee’s symptoms first appeared; **and**
- At least 24 hours have passed since resolution of fever, without the use of fever-reducing medication; **and**
- The employee’s other COVID-19 symptoms are improving.

Some employees with COVID-19 symptoms and/or a COVID-19 diagnosis may be instructed by their healthcare provider to isolate for longer than 10 days. However, due to the potential delays in seeking treatment and the demands on the healthcare system, OSHA endorses the CDC’s recommendation that employers should not require a doctor’s note from employees to verify that they are healthy and able to return to work.

Quarantine – Employees Exposed to COVID-19

Similarly, OSHA adopts the CDC’s recommendations that employees who are exposed to COVID-19 be excluded from work and quarantine for up to 14 days from their last exposure, subject to state and local recommendations.

What constitutes an exposure?

OSHA, like the CDC, defines exposure to include individuals who had direct physical contact with an individual sick with COVID-19 (i.e., living with, providing care, sharing food, or being exposed to secretions) or “close contact,” which includes being within 6 feet for a cumulative total of 15 minutes or

more within a 24-hour period starting from 2 days before illness onset (or for asymptomatic patients, 2 days prior to the COVID-19 test specimen collection), with a person confirmed to have COVID-19.

How long should employees quarantine?

Employees who are exposed to COVID-19 should quarantine for 14 days after the date of their last direct or close contact with a person who has COVID-19. During the 14-day quarantine period, employees should be instructed to actively monitor for symptoms, continue practicing social distancing and hygiene measures, and wear a face covering.

While the CDC has advised that the 14-day quarantine period is the most effective way to ensure employees who are exposed to COVID-19 do not infect others, it recognizes that local public health authorities may appropriately shorten quarantine to between 7 and 10 days depending on local circumstances. Employers should consult guidance from local public health authorities to determine whether it is possible to aptly reduce the burden of a 14-day quarantine period while still adequately minimizing the risk of further spread of the virus.

Additional Detail on Key Measures – Social Distancing and Other Workplace Considerations

OSHA emphasizes the importance of social distancing, improved ventilation, and other measures in minimizing the risk of spreading COVID-19 in the workplace. The OSHA guidance recommends that employers consider some or all of the following workplace modifications where possible to best meet the goal of preventing workplace exposures:

- Maintaining social distancing in the workplace by limiting the number of employees allowed in the workplace at one time through telework policies and flexible work hours for employees;
- Reconfiguring the workplace to separate workstations by 6 feet or more, or installing physical barriers between workstations where reconfiguration is impractical and 6 feet of separation cannot be maintained;
- Providing employees with face coverings at no cost and requiring employees to wear face coverings at all times in the workplace unless unable to because of a disability, medical condition, or for other safety reasons;
- Improving the air quality of the workplace by regularly inspecting the ventilation systems, increasing ventilation rates, and increasing the circulation of fresh outdoor air in the workplace; and
- Performing routine cleaning and disinfection of the workplace, with a particular emphasis on cleaning and disinfecting frequently touched surfaces in the workplace, such as workstations, handrails, and doorknobs.

Further Information

We will continue to monitor guidance issued by OSHA related to protecting employees from potential exposure to COVID-19 in the workplace. This post provides only a high-level summary of the OSHA guidance and it is not a substitute for legal advice. OSHA and other federal and state agencies will likely continue issuing guidance that employers can follow to adequately protect employees and maintain safe and healthful workplaces. Employers are encouraged to consult with a member of Peabody &

Arnold's Employment Law and Litigation Practice Group with any questions or for further information.