**New OSHA COVID-19 Guidance on Mitigating and Preventing the Spread
of COVID-19 in the Workplace**

On January 29, 2021, the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") released guidance for employers titled, *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*.[1] This guidance contains recommendations as well as descriptions of mandatory safety and health standards. It does *not* create new legal obligations for employers. Instead, as stated by OSHA, "[t]he recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace."

COVID-19 Prevention Programs

The guidance encourages employers to implement COVID-19 Prevention Programs in the workplace. According to the Agency, these programs are an effective way to mitigate the spread of COVID-19 at work and employees and/or their representatives should be involved with the program's development and implementation. The guidance lists 16 elements—four of which are considered key elements—that should be included in a COVID-19 Prevention Program. The four key elements that should be included are:

1. Identification of where and how workers might be exposed to COVID-19 at work by conducting a hazard assessment.

2. Identification of a combination of measures that will limit the spread of COVID-19 in the workplace. This includes a combination of eliminating the hazard, engineering controls, workplace administrative policies, personal protective equipment ("PPE"), and other measures, prioritizing controls from most to least effective, to protect workers from COVID-19 hazards.

3. Instruct workers who are infected or potentially infected to stay home and isolate or quarantine to prevent or reduce the risk of transmission of COVID-19.

4. Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards.[2]

Return to Work Criteria

The guidance discusses additional measures for limiting the spread of COVID-19, starting with separating and sending home infected or potentially infected people so they cannot infect other workers. Employers should follow a symptom-based strategy for identifying, separating, and sending home workers according to OSHA, although there may be limited circumstances where a test-based strategy is appropriate.

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[1] For a copy of OSHA's guidance, see https://www.osha.gov/coronavirus/safework.
[2] For a complete list of the recommended elements for a COVID-19 Prevention Plan, see https://www.osha.gov/coronavirus/safework#role-employers-workers.

Under a symptom-based strategy, workers who think or know they had COVID-19 <u>and</u> had symptoms should only return to work after:

1. At least 10 days have passed since symptoms first appeared;

2. At least 24 hours have passed with no fever without fever-reducing medication; and

3. Other symptoms of COVID-19 are improving (loss of taste and smell may persist for weeks or months and need not delay the end of isolation).

Some workers may need to isolate longer than 10 days, as recommended by their doctor. Please keep in mind that while the Americans with Disabilities Act ("ADA") permits employers to ask for a doctor's note to verify that workers are healthy and able to return to work, OSHA does not encourage such a practice given the potential delays and demands on the healthcare system.

As for workers who have been in close contact with a COVID-19 positive individual, local health departments typically establish the quarantine guidelines for such individuals. While the CDC continues to recommend that such individuals stay home for 14 days after their last contact and monitor their symptoms, it recently provided the following two options to shorten an individual's quarantine below 14 days:

1. Quarantine can end after 10 days after an individual's last contact with COVID-19 without testing and if no symptoms have been reported during daily monitoring.

2. Quarantine can end after seven days after an individual's last contact with COVID-19 after receiving a negative test. The test must occur at least five days after the individual's last exposure.

In either of these scenarios, the individual must continue to monitor their symptoms until 14 days after their last exposure and self-isolate if symptoms reappear within that period, wear a face covering, stay at least six feet from others, wash hands, and avoid crowds, amongst other steps to prevent the spread of COVID-19.

In limited circumstances, employers may consider permitting critical infrastructure workers to continue to work when it is necessary to preserve the function of critical infrastructure workplaces.

<u>Social Distancing Measures</u>

Maintaining at least six feet of distance between individuals can be one of the best ways to protect individuals from infection. As such, OSHA recommends that employers implement various measures such as limiting the number of people in one place at any given time (including during toolbox talks and safety meetings), increasing the physical space between workers and/or customers, altering work spaces to add physical cues reminding individuals to physically distance from one another (e.g., signs, tape marks, decals, etc.), offering vulnerable workers duties that minimize their contact with others, and prohibiting handshaking or other forms of physical contact.

Engineering Controls

The guidance discusses two specific types of engineering controls for employers to consider: barriers between workers and ventilation. At fixed workstations where workers are not able to remain at least six feet away from other people, OSHA recommends that transparent shields or other solid barriers (e.g., plexiglass, flexible strip curtains) be installed. These barriers do not replace the need for social distancing according to the Agency, and six feet of separation should still be maintained between individuals when possible.

OSHA also recommends that employers improve ventilation to prevent the spread of COVID-19 in buildings. The guidance lists a number of helpful strategies to achieve this goal, such as:[3]

1. Increase ventilation rates when possible.

2. When weather conditions allow and it does not pose a safety or health risk to others in the building, increase fresh outdoor air by opening windows and doors. Fans can be used in conjunction with open windows to increase effectiveness.

3. Reduce or eliminate air recirculation.

4. Improve central air filtration to the MERV-13 or the highest compatible with the filter rack, and seal edges of the filter to limit bypass.

Face Coverings and PPE

Face Coverings are simple barriers that help prevent respiratory droplets from reaching others. According to OSHA, face coverings should be made of at least two layers of a tightly woven breathable fabric and should not have exhalation valves or vents. They should fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face. When worn properly, face coverings can suppress the spread of COVID-19. Wearing a face covering, however, is complementary to and not a replacement for physical distancing.

The guidance recommends that employers provide all workers with face coverings at no cost to the worker. In addition, employers should require any other individuals at the workplace (e.g., visitors, customers, non-employees) to wear a face covering unless they are under the age of two or are actively consuming food or beverages on site.

OSHA standards may require employers to provide PPE to supplement other controls when the measures discussed above cannot be implemented or do not protect workers fully. In these scenarios, employers must determine what PPE is necessary and provide all necessary PPE to workers at no cost in accordance with relevant OSHA standards.

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[3] OSHA recommends a number of additional methods to improve ventilation. For a complete list of ventilation recommendations, see https://www.osha.gov/coronavirus/safework#improving-ventilation.

Sanitization, Cleaning, and Disinfecting Practices

Per OSHA's guidance, employers should ensure that workers, customers, and visitors have adequate supplies and time to clean their hands frequently and cover their coughs and sneezes. Posters encouraging hand hygiene and physical distancing should be posted at the entrance to a workplace and in other areas where they are likely to be seen. These posters should be in a language workers can understand, including non-English speakers.

Employers should also develop, implement, and maintain a plan to perform regular cleanings to reduce the risk of exposure to COVID-19 in the workplace. This should include routine cleaning and disinfecting of all frequently touched surfaces and portable jobsite toilets, prohibiting the sharing of objects or tools between workers or ensuring appropriate cleaning and disinfection of shared tools, providing disposable disinfecting wipes so that commonly used surfaces can be wiped down before each use, storing and using disinfectants in a responsible manner, and advising workers to always wear gloves or additional PPE appropriate for the chemicals being used.