

Chapman Client Alert

June 11, 2021

Current Issues Relevant to Our Clients

OSHA Issues Healthcare Emergency Temporary Standard and Updated Guidance on COVID-19

On June 10, 2021, OSHA issued an Emergency Temporary Standard (ETS) applicable to the healthcare industry regarding COVID-19. The ETS applies to settings where any employee provides healthcare or healthcare support services, with certain specified exceptions. Exceptions to the ETS include vaccinated employees in home healthcare settings and non-hospital ambulatory care settings (such as doctor's offices), in both instances where non-employees are screened and those with suspected or confirmed COVID-19 infections are not permitted entrance or are otherwise not present. The ETS requires that employers, *inter alia*, conduct hazard assessments, implement social distancing, and ensure that employees wear facemasks, respirators, and other required personal protective equipment.

OSHA also issued updated guidance applicable to employers and workers not covered by the ETS. OSHA's updated guidance states that "[u]nless otherwise required by federal, state, local, tribal, or territorial laws, rules, and regulations, most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at risk from COVID-19 exposure." The new guidance, therefore, applies only to protecting unvaccinated and at-risk workers. OSHA considers at-risk workers to be those who are unable to be fully protected from vaccinations, such as those taking immune-weakening medications, regardless of their vaccination status.

OSHA's guidance provides that employers should take steps to protect unvaccinated and at-risk workers in their workplaces by:

- Granting paid time off for employees to get vaccinated.
- Instructing workers who are infected and unvaccinated workers who have had close contact with someone who is COVID-positive to stay home from work, including through non-punitive absence policies.
- Implementing social distancing for unvaccinated and at-risk workers in all communal areas, including by allowing telework, flexible work hours, staggering start/stop times, and the use of barriers.
- Providing unvaccinated and at-risk workers with masks, respirators and required personal protection equipment at no cost to employees. Regarding masks, the OSHA guidance provides that unvaccinated workers may opt to not wear masks outside unless they are at-risk. OSHA also suggests consultation with occupational safety and health professionals in situations where the use of masks

increases risks from heat-related illnesses or poses other safety risks.

- Educating and training workers on COVID-19 policies and procedures in a language that the workers understand.
- Suggesting that unvaccinated customers, visitors, and guests wear masks.
- Maintaining ventilation systems.
- Performing routine cleaning and disinfection.
- Recording and reporting COVID-19 infections and deaths, including on Form 300 logs in accordance with previously issued guidance. OSHA is not requiring employers to record side effects from COVID-19 vaccinations through at least May 2022.
- Implementing protections from retaliation and establishing an anonymous process, such as a hotline, for workers to voice concerns about COVID hazards.

In addition to the above, OSHA recommends the following measures for "higher-risk workplaces" with unvaccinated or at-risk workers (such as manufacturing, meat, poultry and seafood processing, and high-volume retail/grocery stores):

- Staggering arrival/departure and break times and providing temporary break areas and restrooms to allow for social distancing.
- Providing visual cues, such as floor markings, to encourage social distancing.

- Implementing improved ventilation.
- For workplaces with processing or assembly lines, spacing unvaccinated and at-risk employees or providing barriers where social distancing is not possible.
- For retail employers, suggesting that unvaccinated customers wear masks.

OSHA's guidance is in addition to previously issued guidance and does not provide any insight into how an employer is to determine and monitor an employees' vaccination or at-risk status. The guidance is not a standard or regulation and creates no new legal obligations.

A full copy of the guidance can be found at:
<https://www.osha.gov>

[For More Information](#)

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