



AN ANALYSIS OF LATEST U.S. OSHA COVID-19 SAFETY & HEALTH GUIDANCE

On Jan. 29, the U.S. Occupational Safety and Health Administration (OSHA) issued new [guidance](#) on protecting workers and preventing the spread of COVID-19 in the workplace. Per OSHA, the guidance is not a standard or regulation, creates no new legal obligations and the recommendations are advisory in nature, informational in content, and are intended to assist employers in recognizing and abating hazards in the workplace.

With that said, the guidance refers to the Occupational Safety and Health (OSH) Act's [general duty clause](#), which, in the absence of a COVID-19 standard, OSHA has utilized to enforce workplace hazards associated with COVID-19. Since the start of the coronavirus pandemic through Dec. 31, 2020, OSHA issued citations arising from 300 inspections for COVID-19-related violations, resulting in proposed penalties totaling \$3,930,381, some of which were issued under the general duty clause. AGC is seeking further information on COVID-19-related citations issued to date.

While the guidance was announced as being stronger, it generally follows the well-established protocols that have already been in place since the beginning of the pandemic. Such measures include not permitting any ill individuals on the jobsite, wearing face masks/coverings, practicing social distancing, routine cleaning and disinfecting, among others. However, there are several new recommendations included in the guidance. These recommendations are as follows:

- **Involving employees and their union or other representatives in the development of a COVID-19 safety plan**
 - AGC will seek further clarification on the involvement of such representatives and their role with regard to existing COVID-19 safety plans.
- **Providing information and training on the benefits and safety of vaccinations**
 - The U.S. Center for Disease Control and Prevention (CDC) has provided a document [linked here](#) that may satisfy this recommendation. AGC is working on a toolbox talk format version of that CDC document to make available for AGC members.
- **Making COVID-19 vaccine or vaccination series available at no cost to all eligible employees**
 - Making available the vaccine or vaccination series does not constitute a mandate for employers to require that employees be vaccinated. Employers should offer the vaccine or vaccination series to an employee, whether or not the employee agrees to take the vaccine or vaccination series. Employers simply have to offer the opportunity for vaccination. AGC is seeking clarification on what exactly employers should provide when it comes to offering workers the opportunity for vaccination (e.g., reasonable compensation time to get their vaccination)
- **Minimizing the negative impact of quarantine and isolation on workers**
 - When possible, allow workers to telework, or work in an area isolated from others. If those are not possible, allow workers to use paid sick leave, if available, or consider implementing paid leave policies to reduce risk for everyone at the workplace. The Families First Coronavirus Response Act provides certain employers 100% reimbursement through tax credits to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19 through March 31, 2021.



- **Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards**
 - Section 11(c) of the Occupational Safety and Health (OSH) Act prohibits discharging or in any other way discriminating against an employee for engaging in various occupational safety and health activities. For example, employers may not discriminate against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency, or to the public, such as through print, online, social, or any other media; or against an employee for voluntarily providing and wearing their own personal protective equipment, such as a respirator, face shield, gloves, or surgical mask.
- **Not distinguishing between workers who are vaccinated and those who are not**
 - Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is no evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person. The CDC explains that experts need to understand more about the protection that COVID-19 vaccines provide before deciding to change recommendations on steps everyone should take to slow the spread of the virus that causes COVID-19.
- **Providing guidance on screening and testing**
 - Follow state or local guidance and priorities for screening and viral testing in workplaces. Testing in the workplace may be arranged through a company's occupational health provider or in consultation with the local or state health department. Employers should inform workers of employer testing requirements, if any, and availability of testing options. The CDC has published strategies for consideration of incorporating viral testing for SARS-CoV-2, the virus that causes COVID-19, into workplace COVID-19 preparedness, response, and control plans.

The new guidance also links to industry specific recommendations, including construction. Currently, the information for [construction contractors](#) and [construction workers](#) remains unchanged and maintains that construction workers' risk exposure to be generally in the low to medium range.

Concerning respiratory protection (beyond face masks/coverings), the current guidance states that in limited circumstances, including situations involving close contact (i.e., within 6 feet) with someone with suspected or confirmed COVID-19, respiratory protection may be needed. AGC is also seeking further clarification on this point.

OSHA does expect to continue updating guidance and recommendations relevant to particular industries or workplace situations over time, meaning the current information is subject to change. AGC will continue to monitor the development of any future or revised guidance and provide updates accordingly.

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