

# CLIENT ALERT

## New OSHA Guidance on COVID-19 in the Workplace

Jan.29.2021

On January 29, 2021, the federal Occupational Safety and Health Administration (OSHA) released updated guidance on addressing COVID-19 in the workplace, [Protecting Workers: Guidance on Mitigating the Spread of COVID-19 in the Workplace](#) (Guidance). This guidance was directed by President Biden's January 21 [Executive Order on Protecting Worker Health and Safety](#). Although this Guidance is not itself an enforceable health and safety standard, that same Executive Order directed OSHA to "consider whether any emergency temporary standards on COVID-19" are necessary, and, if so, to promulgate any such emergency temporary standard (ETS) or standards by March 15, 2021. In fact, some states that operate their own occupational safety and health agencies (state OSH agencies), including California, Oregon, and Michigan, have already promulgated COVID-specific emergency standards of their own and, [as discussed in this alert](#), Virginia has gone further in issuing a first-in-the-nation permanent standard. To date, OSHA has primarily relied on the General Duty Clause of the Occupational Safety and Health Act of 1970 to the extent it has pursued COVID-related enforcement, and against the backdrop of the noted state OSH agencies taking more aggressive regulatory and enforcement action to combat COVID-19 in the workplace, there has been significant political pressure, especially from congressional Democrats and labor groups, for OSHA to do more from the federal level.

The Guidance addresses COVID vaccinations for the first time, recommending that employers make vaccination available at no cost to all eligible employees. And it directs employers not to make distinctions between employees have been vaccinated and those who have not with respect to other preventive measures.

Much of the Guidance repeats what by now are the well-known best practices: practice social distancing, maintain good and consistent hygiene, and wear face masks. Echoing elements from the various state OSH agency standards, the new Guidance also addresses the importance of, and urges the adoption of, COVID-19 prevention programs in the workplace. Among the key elements of any prevention program recommended by OSHA in its Guidance are:

- Assigning a plan coordinator
- Conducting COVID-specific hazard assessments for each job
- Implementing a hierarchy of controls (*e.g.*, engineering the work environment, using administrative actions to control proximity between employees, requiring personal protective equipment (PPE) and making other cleaning supplies available, *etc.*)
- Adopting employment policies that account for and support special considerations for higher-risk employees
- Training and communication procedures to educate the workforce about the prevention program
- Quarantine policies for exposed or infected employees but with minimal detrimental financial impact on employees
- Providing guidance to employees on COVID-19 screening and testing, and making vaccine available at no cost to employees
- Maintaining COVID-specific records or making reports consistent with OSHA's existing record-keeping and reporting standards and guidance

- Making employees aware of anti-retaliation protections and implementing procedures giving employees the ability to report issues anonymously

The Guidance also urges employers to engage their employees in the development and implementation of the prevention program.

In a follow-up question-and-answer call about its Guidance, OSHA officials stated that no decision has yet been made on whether OSHA will in fact promulgate a COVID-19 ETS. But given the fact that combatting COVID-19 is the new administration's stated top priority, it has already been widely reported that an ETS is expected. If OSHA does promulgate an ETS, we expect many of these Guidelines will be adopted into that ETS by or before March 15, 2021, as directed by the January 21 Executive Order. Crowell & Moring will continue to monitor and all developments.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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