

OSHA Reinforces COVID Guidelines for the Workplace

By: Joseph P. Paracac, Jr. and Robert M. Pettigrew

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On January 29, 2021, the Occupational Safety and Health Administration (OSHA) updated its existing guidelines concerning coronavirus protection measures for the workplace. Focusing on the implementation of workplace protection programs, OSHA's updated advisory guidance seeks to reinforce the benefits of implementing workplace policies along with the critical role employees have in combating workplace spread. These guidelines are "intended to inform employers and workers in most workplace settings outside of healthcare to help them identify risks of being exposed to and/or contracting COVID-19 at work and to help them determine appropriate control measures to implement."

OSHA maintains that the implementation of a strong coronavirus protection program is the most effective way to combat virus spread in the workplace. OSHA has identified 16 categories or elements that an effective coronavirus protection program should address, which include appointing a workplace coordinator and conducting a workplace specific hazard assessment. This assessment should begin by identifying risks in the workplace and developing control measures to mitigate them. The guidance stresses that workers are often the most valuable source of information relating to conditions that contribute to the risk of spread.

OSHA recommends that an effective protection program should address the various measures available to minimize spread between workers, which relate to the use of personal protective equipment (PPE), ventilation upgrades, sanitizing methods and personal hygiene measures. In addition to recommending the use of PPE, an effective protection program should address social distancing in the workplace. OSHA urges employers to send potentially infected workers home to separate them from the workforce. Workplaces should also be reconfigured to allow employees to remain at least six feet apart while performing their work. Because mask wearing is not intended to replace physical distancing in the workplace, OSHA proposes limiting the number of employees assigned to a particular location through various means, such as teleworking, schedule modification or physical modification of work sites. Where social distancing cannot be maintained, the installation of physical barriers is recommended.

The guidance also emphasizes a greater role for the worker in combatting the spread of coronavirus. For example, OSHA recommends that employees contribute to the development of an employer's multilingual coronavirus protection program and be made aware of any resources available to them. In addition to training workers on the risk and mitigation efforts associated with COVID-19, employers are encouraged to implement employee absence policies that are not punitive in nature. The guidance urges employers to permit potentially infected employees to remain home. Workplace policies should also emphasize that employees will not be retaliated against in any manner for internally or publicly voicing complaints and/or concerns relating to coronavirus. To this end, OSHA recommends that employers implement an "anonymous process" for employees to report coronavirus-related hazards to avoid fear of reprisal.

OSHA further urges employers to assist their workforce with regard to both COVID-19 screening and vaccination issues. Employers should inform their workers of any testing requirements and availability of testing options. Where feasible, employers are encouraged to offer screening and testing to their workforce. Employers are also encouraged to provide information concerning the benefits of vaccination and to offer it at no cost to eligible employees. The guidance further recommends that a protection program not distinguish vaccinated workers from non-vaccinated workers because there is still insufficient evidence concerning the ability of vaccinated individuals to transmit the virus to others.

We anticipate that this voluntary guidance is simply a prelude to OSHA's issuance of an emergency temporary standard relating to COVID-19. Nevertheless, OSHA may be able to immediately enforce some of these guidelines through either existing OSHA standards and or the "General-Duty Clause," which requires employers to furnish "place[s] of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." Employers are currently required to treat a confirmed COVID-19 diagnosis that is work-related as a recordable illness. In the meantime, employers who are reopening are well-advised to first conduct an initial hazard assessment of their workplaces for the purpose of developing a coronavirus protection program to mitigate any potential risks to their workers.

If you have any questions please contact Joseph Parac (paracj@whiteandwilliams.com; 201.368.7220), Rob Pettigrew (pettigrewr@whiteandwilliams.com; 201.368.7210) or another member of the Labor and Employment Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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