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MANAGING COVID IN THE WORKPLACE

Employers are grappling with how to manage COVID in the workplace.

- How do we keep our employees safe?
- Can we require vaccines?
- Can we share vaccination status of employees with co-workers and customers?
- What if we have employees who repeatedly call out because they've been exposed to COVID?
- What does the CDC say about masks, quarantines, and when employees can return to work after being sick or exposed to COVID?

EMPLOYEE SAFETY

In early 2020, the world faced a global pandemic and for most organizations, it resulted in implementing protocols such as remote work, social distancing, and masking. Many governmental entities at the local, state, and federal level implemented mandates that required all but essential businesses to close and/or work remotely. As the initial ravages of COVID began to wane, states such as Florida and Texas opted to reopen in stages to allow individuals to safely return to work and resume their typical life activities. However, masking and hand sanitizing remained the norm. As other parts of the country and the world reopened and as vaccines become available, employers began to loosen some of their protocols. They brought remote employees back into the workplace and were less diligent about requiring them to wear masks.

Currently, there has been a resurgence of COVID cases which have particularly been a result of the Delta variant. Because of this, employers are rethinking their strategies to manage their workplaces safely.

The Occupational Safety & Health Administration (OSHA) imposes an obligation for employers under the General Duty Clause to maintain a safe and healthful environment for their employees. OSHA has created a [webpage dedicated to coronavirus](#) and has issued guidance that sets their expectations of what employers should do to help ensure a safe work environment is established and maintained to prevent the spread of COVID. Some of their expectations include:

- Granting paid time off from work to employees in order for them to get the vaccine;
- Have a policy requiring **all** employees who have COVID-like symptoms to stay home from work per [CDC guidelines](#);
- Have a policy requiring unvaccinated employees who have been in [close contact](#) with someone who has tested positive for COVID to stay home per [CDC guidelines](#);
- Remote work;
- Implement social distancing protocols;
- Implement masking protocols; and
- Educate employees about COVID symptoms, prevention, and vaccination.

More information about OSHA's guidance on preventing the spread of COVID in the workplace can be found in their webpage entitled [Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#).

Employers may want to consider monitoring employees and visitors to their facilities for temperatures, COVID-like symptoms, etc. This was a protocol that many organizations implemented in 2020 but have since abandoned. This could literally stop the spread of disease, including flus and stomach viruses, at the door.

VACCINES – CAN WE REQUIRE THEM?

General Guidelines

In most jurisdictions, non-unionized employers are permitted to require employees to obtain COVID vaccines. In a unionized workplace, an employer may need to bargain with the union over this requirement.

Before implementing such a policy, it's important to understand that the EEOC has issued comprehensive guidance on [What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#). In this guidance, you'll see that the EEOC does permit you to require the vaccine. The EEOC even allows employers to give nominal incentives to employees in order to encourage vaccination.

Any documentation employees provide demonstrating their vaccination status is considered a medical record and must be maintained in a separate, confidential medical file following Americans with Disabilities Act (ADA) guidelines. Furthermore, an applicant may not be asked about his or her vaccination status until after a job offer has been extended.

The employer is obligated to make reasonable accommodations for employees who have medical conditions that prevent them from receiving the vaccine and for those employees who are refusing the vaccine because of their sincerely held religious beliefs. The employment law firm of Fisher Phillips has posted on their [website](#) sample mandatory and non-mandatory vaccination policies as well as sample forms relative to reasonable accommodations. Fisher Phillips also has a website dedicated to [COVID-19](#). The employment law firm of FordHarrisonLLP also provides information regarding COVID-19 on their [Coronavirus Taskforce](#) page.

Because a person's vaccination status is considered a medical record, employers aren't permitted to share that status with co-workers, vendors, customers, etc. Even though you may have contractors or customers that demand this information, you should consult with your employment law attorney before you make a decision to identify who is or isn't vaccinated in your workplace.

When considering mandatory vaccines in your workplace, evaluate whether or not some of your employees may choose to leave your organization rather than get the vaccine. What will your plan be if your best employee opts to resign rather than get the vaccine? With today's tight labor market, consider your organization's ability to attract new employees if you mandate the COVID vaccine.

Some states, such as Florida, prohibit organizations from asking or requiring customers to provide proof of vaccination. Other states, such as New York, have taken a different approach

and are requiring individuals to show proof of vaccination for indoor dining, gyms, Broadway shows, etc. It's important to find out what the requirements are for each state in which you operate.

Federal Contractor/Sub-Contractor Requirement

In July President Biden issued an executive order requiring vaccination for all employees working on or in connection with a covered contract OR working at a covered contractor worksite (even if not working in connection with a covered contract), including remote workers. Full COVID-19 vaccination is required by **December 8, 2021** for all covered employees. Exceptions may be made for religious and medical accommodations. Weekly testing in lieu of vaccination is not permitted.

Employers are required to comply with the CDC's transmission guidelines for masking and social distancing guidelines as determined by the [CDC COVID-19 Data Tracker County View](#). Covered employers must designate an individual(s) to coordinate COVID-19 workplace safety efforts. These safety efforts include:

- Review of vaccination records;
- Establishing clear, easily understood protocols for visitors and employees about COVID-19 safety requirements. These protocols are to be posted at the entrances to your worksites;
- Checking the COVID-19 transmission level at least weekly; and
- Immediately adjusting safety protocols upwards if/as COVID-19 cases increase.

Federal contracts covered by this order include:

- Procurement for construction covered by the Davis Bacon Act;
- Contract for services under the Services Contract Act;
- Contract in connection with federal contracts or land offering services to federal employees, their dependents, or the general public; and
- Contracts may be a "contract-like" instrument that is not a grant.

For contracts awarded before October 15 and if performance is ongoing, the requirement will be incorporated when there is an option exercised or extension made. For contracts made between October 15 and November 14, the solicitation will include the requirements. For contracts made from November 14 onward, the requirements must be included in all new contracts.

Requirement for Employers with 100+ Employees

President Biden has ordered the Occupational Health Administration (OSHA) to issue an Emergency Temporary Standard (ETS) that will apply to all private employers with more than 100 employees. This ETS will require such employers to require all employees be vaccinated or submit to COVID-19 testing. Included in this rule will be a mechanism for citations and penalties of up to \$14,000 per violation. OSHA is expected to issue guidance in October.

An ETS can remain in place for six months, after which time it must be replaced by a permanent OSHA standard.

CONTROLLING ATTENDANCE

You may have employees who have had multiple exposures to COVID that have required them to self-quarantine following CDC guidelines for as little as 7 days and up to 2 weeks.

Employees who are actually ill with COVID or who are caring for a child, spouse, or parent with COVID may be protected by the Family & Medical Leave Act since COVID would be regarded as a serious health condition. Otherwise, as an employer, you have a decision to make with respect to whether or not the third or fourth time an employee has had to quarantine because they've tested positive OR because they were exposed to a COVID positive person violates your attendance policy. Before making an adverse employment decision against that employee, it is recommended that you consult with your employment law attorney, and consider how it may be perceived by your other employees and in the community that you terminated someone for too many instances of COVID-related absences.

CENTERS FOR DISEASE (CDC) CONTROL GUIDANCE ON COVID

While the CDC provides excellent information on its website, their guidance frequently changes and it's not always easy to find the information you're seeking. For example, the CDC recently revised its masking guidelines to recommend that vaccinated individuals continue to wear masks in public areas.

Here are the main CDC pages that will be of help to you and there is a chart provided after these links that will allow you to navigate the quarantine, masking, and return to work maze.

[Interim Public Health Recommendations for Fully Vaccinated People](#)

[Symptoms of COVID-19](#)

[Quarantine & Isolation](#)

[Interim Guidance on Ending Isolation and Precautions for Adults with COVID-19](#)

QUARANTINE	UNVACCINATED (includes those who are partially vaccinated but not fully vaccinated)	VACCINATED
<p>Close contact with someone who has COVID-19</p> <p>Close contact: Someone who was within 6 feet of an infected person (laboratory-confirmed or a clinically compatible illness) for a cumulative total of 15 minutes or more over a 24-hour period (for example, <i>three individual 5-minute exposures for a total of 15 minutes</i>). An infected person can spread SARS-CoV-2 starting from 2 days before they have any symptoms (or, for asymptomatic patients, 2 days before the positive specimen collection date), until they meet criteria for discontinuing home isolation.</p>	<ul style="list-style-type: none"> Stay home for 14 days Monitor for COVID symptoms If possible, stay away from people with whom you live. <p>The quarantine period may be shortened in these circumstances:</p> <ul style="list-style-type: none"> After day 10 without testing if there are no symptoms After day 7 after receiving a negative test result (test must occur on day 5 or later of the exposure) 	<p>Fully vaccinated individuals do not have to quarantine unless they have symptoms.</p> <p>They should be tested 3-5 days after their exposure even if they don't have symptoms.</p> <p>Regardless of symptoms, wear a mask indoors in public for 14 days following exposure or until their test result is negative.</p>
<p>When you can be around others after having COVID symptoms</p>	<ul style="list-style-type: none"> 10 days since symptoms first appeared and 24 hours with no fever without the use of fever-reducing medication and Other symptoms of COVID-19 are improving 	
<p>When you can be around others after testing positive for COVID-19 but had no symptoms</p>	<p>If you continue to have no symptoms, you can be with others after 10 days have passed since you had a positive viral test for COVID-19.</p>	
<p>Severely ill with COVID-19 or have a weakened immune system caused by a health condition or medication</p>	<p>People who are severely ill with COVID-19 may need to stay home longer than 10 days and up to 20 days after symptoms first appear. People with weakened immune systems may require testing to determine when they can be around others.</p>	

The CDC provides special guidance for [healthcare professionals](#) regarding when they need to quarantine and when they can return to work.

Workplace Guidance when an Employee Tests Positive or is Suspected of Having COVID:

Despite all of the safety protocols that an employer may have in place, when an employee lets you know that they are positive for COVID or are experiencing symptoms, you may have an obligation to notify co-workers who may have been in close contact with that employee.

The [CDC provides guidance](#) on the action an employer is to take if an employee has or is suspected of having COVID-19:

Follow the CDC [cleaning and disinfection recommendations](#):

- Clean dirty surfaces with soap and water before disinfecting them.
- To [disinfect surfaces](#), use [products that meet EPA criteria for use against SARS-CoV-2](#), the virus that causes COVID-19, and are appropriate for the surface.
- Always wear gloves and gowns appropriate for the chemicals being used when you are cleaning and disinfecting
- Ensure there is adequate ventilation when using cleaning and disinfection products to prevent from inhaling toxic vapors.
- You may need to wear additional PPE depending on the setting and disinfectant product you are using. For each product you use, consult and follow the manufacturer's instructions for use.

Determine which employees may have been exposed to the virus and may need to take additional precautions:

- Employers have an obligation to manage the potentially exposed workers' return to work in ways that best protect the health of those workers, their co-workers, and the general public.
- Inform employees of their possible [close contact](#) (within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period) with someone with confirmed or suspected SARS-CoV-2 infection in the workplace, but maintain confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#).
- Most workplaces should follow the [Public Health Recommendations for Community-Related Exposure](#). The most protective approach for the workplace is for exposed employees (close contacts) to [quarantine](#) for 14 days, telework if possible, and self-monitor for [symptoms](#). This approach maximally reduces post-quarantine transmission risk and is the strategy with the greatest collective experience at present.
- Although CDC continues to recommend a 14-day quarantine, options are provided for shorter [quarantine](#) that may end after day 7 or after day 10 based on certain conditions. Alternatives to the 14-day quarantine are described in the [Options to Reduce Quarantine for Contacts of Persons with SARS-CoV-2 Infection Using Symptom Monitoring and Diagnostic Testing](#). Shortening quarantine may increase willingness to adhere to public health recommendations. However, shortened quarantine may be less effective in preventing [transmission of COVID-19](#) than the currently recommended [14-day quarantine](#).
- Workplaces could consider these quarantine alternatives as measures to mitigate staffing shortages, but they are not the preferred options to mitigate staffing shortages. Workplaces should understand that shortening the duration of

quarantine might pose additional transmission risk. Employers should also consider workplace characteristics when considering if this additional transmission risk is acceptable (e.g., level of community transmission, ability to maintain social distancing, proportion of employees at [increased risk for severe illness](#), and priority for continuity of operations). Employers should counsel workers about the need to monitor for symptoms and immediately self-isolate if symptoms occur during the 14 days after their exposure and the importance of consistent adherence to all recommended mitigation strategies (e.g., [mask wearing](#), [social distancing](#), [hand hygiene](#), [cleaning and disinfection](#), and [proper ventilation](#)).

- Implementation of [testing strategies](#) can supplement measures to reduce transmission in the workplace. Repeated testing over time, also referred to as serial testing, may be more likely to detect infection among workers with exposures than testing done at a single point in time.
- [Critical infrastructure](#) workplaces should follow [COVID-19 Critical Infrastructure Sector Response Planning](#) and guidance on [Testing Strategy for Coronavirus \(COVID-19\) in High-Density Critical Infrastructure Workplaces after a COVID-19 Case is Identified](#).

Some states, such as Florida (FS 678.38), have implemented laws that limit liability from claims that someone has contracted COVID on their property. For example, for such a claim to progress in Florida, the plaintiff must provide a doctor's sworn attestation that within a reasonable degree of medical certainty that the plaintiff's COVID-19 related harm was caused by the defendant. Other states have not adopted such protections.

COVID continues to be a challenge for employers and there is uncertainty as to when this pandemic will end. It's important for employers to refine and maintain the safety protocols they implemented when the pandemic first began in 2020. These protocols to limit the spread of COVID are an organization's best line of defense.

If you have any questions about the information contained in this article, please don't hesitate to call Employers Association Forum, Inc. (EAF) at 407.260.6556

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