

OSHA Implements Safety Standards for Healthcare Industry and Best Practice Guidance for Other Employers

By: Alexander J. Burrige, Associate, Workplace Law Group

The Occupational Safety and Health Administration (“OSHA”) published its long-awaited Emergency Temporary Standard (“ETS”) and accompanying guidance, “Protecting Workers,” on June 10, 2021. The ETS applies to covered healthcare employers, while the guidance articulates best practices for all employers in their provision of a “safe and healthful workplace.”

Like the [Emergency Rules](#) issued by the Michigan Occupational Safety and Health Administration (“MIOSHA”) (applicable to all Michigan employers), OSHA’s “Protecting Workers” guidance distinguishes between vaccinated and unvaccinated employees and focuses on the continued masking and distancing recommendations for those who are not yet fully vaccinated.

Below is a summary of OSHA’s “Protecting Workers” guidance:

- 1. Grant Paid Leave to Incentivize Vaccination.** Under the [American Rescue Plan](#), employers with 500 or fewer employees that voluntarily provide employees paid leave to obtain and recover from vaccination may be eligible for refundable payroll tax credits.
- 2. Instruct Certain Employees to Stay Home from Work.** Employees who are diagnosed with COVID-19 and display symptoms of COVID-19 should not be permitted in the workplace; unvaccinated employees who report close contact with a confirmed case of COVID-19 should also be denied entrance.
- 3. Social Distancing for Unvaccinated and At-Risk Employees, Visitors, and Customers.** Maintaining six feet of distance, limiting the number of people in one place at any given time, setting fixed workstations, and installing transparent shields or other solid barriers continue to be ways to prevent the spread of COVID-19 in the workplace.

4. **Mask Up.** Employers must provide masks to unvaccinated and at-risk persons and require their use.
5. **Perform Routine Cleaning and Disinfection.** Employers must document and implement a daily cleaning procedure, using soap and cleaning supplies to remove any virus particles that may be on surfaces. If someone in the workplace is suspected of having or confirmed to have COVID-19, close off the area and take additional precautions.
6. **Maintain Ventilation Systems.** Ensuring HVAC systems are operating in accordance with manufacturer's instructions and design specifications is a key control to limit the concentration of viral particles in indoor air and reduce the risk of virus transmission to unvaccinated employees.
7. **Educate Employees on COVID-19 Policies and Procedures.** Employers should inform employees about basic COVID-19 risks, workplace policies implemented to protect employees from COVID-19 hazards, vaccine policies, and the right to raise workplace safety and health concerns free from retaliation. Employers should document any communications or trainings provided to employees.
8. **Record and Report COVID-19 Infections and Deaths.** Employers must continue to record confirmed COVID-19 infections and deaths on OSHA's Form 300 logs when: (a) an event or exposure in the work environment either caused or contributed to an infection; and (b) the infection affected an employee's ability to work. Note, however, [adverse vaccine reactions](#) do not need to be recorded.

Although OSHA's "Protecting Workers" guidance does not create new legal obligations, it does indicate what OSHA considers appropriate measures in a safe work environment. On the other hand, OSHA's ETS (applicable to healthcare employers) and MIOSHA's Emergency Rules are legal obligations that may result in civil penalties that are assessed on a "per violation" basis.

Be aware that under MIOSHA's [Emergency Rules](#), all Michigan employers that permit vaccinated employees to go maskless, need to keep a record of which employees are vaccinated. Alternatively, employers may require all employees, regardless of vaccination status, to wear masks and socially distance.

Employers with questions about OSHA or MIOSHA workplace safety rules should contact any member of **Bodman's Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

WORKPLACE LAW PRACTICE GROUP	AARON D. GRAVES <i>Chair</i> 313.392.1075 agraves@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN 248.743.6077 jcashen@bodmanlaw.com
	GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com	MELISSA M. TETREAU 248.743.6078 mtetreau@bodmanlaw.com
	REBECCA C. SEGUIN-SKRABUCHA 313.393.7594 rseguin-skrabucha@bodmanlaw.com	MICHELLE L. KOLKMEYER 248.743.6031 mkolkmeier@bodmanlaw.com	ALEXANDER J. BURRIDGE 313.393.7560 aburridge@bodmanlaw.com
	DAVID B. WALTERS 248.743.6052 dwalters@bodmanlaw.com	KAREN L. PIPER <i>Of Counsel</i> 248.743.6025 kpiper@bodmanlaw.com	