



S150 South Street
Suite 103-B
Annapolis, Maryland 21401
TEL (301) 577-3786/FAX (301) 577-6476
www.reusablepackaging.org

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OSHA Issues New Guidance to Employers on COVID-19 Workplace Measures

On January 29, 2021, the Occupational Safety and Health Administration (OSHA) issued new guidance titled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace.” The new [guidance](#) is advisory, however, it addresses a broad range of common workplace safety practices as well as other employment policies and practices not always associated with workplace safety.

As you update and implement new workplace policies and procedures related to topics such as vaccines and COVID-19-related leave, you should consider this new guidance from OSHA. Keep in mind that unlike a regulatory requirement that must be complied with by all affected parties, Guidance is more ambiguous. Employers are not required to implement the workplace measures in this (or any) guidance document. However, under OSHA’s General Duty Clause, employers are required to “provide workers with a workplace free from hazards that are causing or likely to cause death or serious physical harm.” As such, employers could find themselves in a difficult legal situation if they are sued by one or more workers who claim that their employer could have created a safer work environment, but knowingly failed to do so.

Guidance Highlights

As noted above, much of OSHA’s new COVID-19 guidance involves practices that are commonplace in most workplaces, e.g., maintaining social distance, wearing face coverings, practicing good hygiene, etc. The new guidance focuses on:

- Hazard assessments to determine employees’ specific safety needs;
- Obtaining employee input into needed procedures – for example, working reviewing workplace safety procedures with an employee representative;
- Takin steps to ensure new safety procedures are communicated effectively to workers; and,

- Creating policies that reduce negative impacts on employees missing work due to COVID-19.

The guidance also provides 16 elements for “effective” workplace COVID-19 prevention programs. These include safety protocols such as isolating employees with symptoms at work, cleaning and disinfection practices, training, screening and testing, and recording and reporting cases. Importantly, these new “best practices” include items not previously addressed in agency guidance or regulation, i.e. vaccines and absence policies.

Vaccines and the Workplace

Last December the Equal Employment Opportunity Commission (EEOC) stated that it would allow employers to implement mandatory vaccine policies ([here](#)). However, *RIPA recommends that employers seeking to implement such a policy obtain legal guidance before doing so.*

The new guidance does not address directly the issue of mandatory vaccination policies. It does, however, encourage employers both to offer the vaccine to employees at no cost and to provide “information and training on the benefits and safety of vaccinations.” Further, it says that once employees begin receiving the vaccine, you should not treat employees who are vaccinated differently than employees who are not vaccinated.

Paid Sick Leave for COVID-19 Quarantining

The new guidance encourages employers to “ensure that absence policies are non-punitive” and to allow employees to use paid sick leave to encourage sick and exposed individuals to quarantine to reduce the risk of transmission. This is another issue fraught with legal implications, therefore, *RIPA recommends that members that choose to establish new or update existing sick-leave policies to include COVID-19, should consult with an attorney.*

Conclusion

While COVID-19 remains a significant threat to the nation and, more specifically, your workforce, employers should make an effort to ensure that their workplace safety policies are clear and reflect to a reasonable extent OSHA rules and guidance. Every workplace is different, so in creating or updating your policies, it is always a good idea to seek guidance from a professional who specializes in these issues.