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MEMORANDUM

January 30, 2021

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: OSHA's Revised Guidance, "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace"

Today, the U.S. Department of Labor's Occupational and Health and Safety Administration (OSHA) released a revised guidance, "[Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#)" ("Revised Guidance"). James Frederick, Principal Deputy Assistant Secretary of OSHA, and Tricia Smith, Senior Counselor to the Secretary of Labor, also provided a short oral briefing regarding the Revised Guidance and answered several questions.¹ The Revised Guidance is the first of what are expected to be numerous measures by the Biden Administration to implement the [President's January 21, 2021 Executive Order on Protecting Worker Health and Safety](#), and enhance protections for employees.

The Revised Guidance should be reviewed carefully as it details what OSHA now deems to be "best practices" to protect employees and prevent the spread of COVID-19. The Revised Guidance also represents a departure from previous OSHA guidance, with heightened responsibilities for employers.

¹¹¹ The Revised Guidance is not a standard or a regulation and does not create any new legal obligations. It is "intended to assist employers in recognizing and abating hazards likely to cause death or serious physical harm as part of their obligation to provide a safe and healthful workplace."



During the briefing, OSHA made very clear that a key difference between the Revised Guidance and its previous iteration is the importance of employee engagement as a best practice and the need to involve employees in developing a workplace COVID-19 preventative program. Additionally, unlike previous guidance, if risks of exposure and/or contracting COVID-19 are identified in the workplace, employers will **need** to address them as detailed in this Revised Guidance – protective measures are no longer “suggested.” The Revised Guidance also contains specific details on numerous infection control practices, such as the barriers needed if a minimum distance of six feet cannot be maintained between workers, and information on improving ventilation.

Revised Guidance

During the briefing, Mr. Frederick highlighted several elements of the Revised Guidance that are essential to a COVID-19 prevention program. Foremost, employers should first engage workers as well as their union in development of a preventative program.² That program should include the following key elements:

- Hazard assessment:
 - Identify where and how workers may be exposed.
- Control measures³ to limit the spread of the virus:
 - Eliminate the hazard by separating and sending infected or potentially infected employees home;
 - Implement physical distancing in all communal areas;
 - At least 6 ft. is to be maintained.⁴
 - Install barriers⁵ if workplace cannot maintain physical distancing;
 - Barriers can be transparent shields or other solid barriers (e.g., plexiglass, flexible strip curtains) installed to separate workers from other people.
 - Barriers should block face-to-face pathways between individuals.

² This point of engaging workers in the development of a COVID-19 prevention program was emphasized a number of times throughout the briefing.

³ Control measures should be determined in line with the principles of the “hierarchy of controls” which generally labels and prioritizes controls in the following order from most to least effective: elimination/substitution, engineering controls, administrative controls and safe work practices, and PPE.

⁴ The revised Guidance notes that this may not be enough distance in enclosed spaces or those with poor ventilation.

⁵ The revised Guidance notes that barriers do not replace the need for physical distancing where 6 ft. should be maintained wherever possible.



- Posture of users should be considered when designing and installing.
 - Use face covers;
 - Improve ventilation;
 - CDC has [guidance](#) on improving ventilation to help prevent the spread of COVID-19.
 - Other ventilation recommendations may be found in the ASHRAE "[Guidance for Building Operations During the COVID-19 Pandemic](#)" and are also detailed in the Revised Guidance.
 - Use Personal Protective Equipment (PPE) if applicable;
 - The Revised Guidance states that if *other measures cannot be implemented or do not protect workers fully*, then OSHA standards **require** employers to provide PPE to supplement other controls.
 - Provide supplies for good hygiene; and
 - Perform [routine cleaning and sanitizing](#) to reduce risk of exposure to COVID-19.⁶
- Adopt non-punitive absence policies that allow potentially infected workers to stay home:
 - Older workers and those with serious underlying medical conditions are at a higher risk and reasonable modifications should be considered.
 - Workers with disabilities may be legally entitled to "reasonable accommodations."
 - Communicate COVID-19 policies and procedures in a language workers understand;⁷ and
 - Implement protections from retaliation for workers who raise COVID-related concerns.

Briefing on Revised Guidance

Mr. Frederick and Ms. Smith reviewed the Revised Guidance, what it means for workplace safety and health, and how OSHA intends to work with stakeholders to improve worker protections.

Mr. Frederick indicated the Revised Guidance is designed to help businesses reopen and stay open, safely. He indicated it will also help employers and workers identify risks of

⁶ Enhanced cleaning and sanitizing following the [CDC recommendations](#) should be performed if someone suspected or confirmed of having COVID-19 was in the facility

⁷ The Revised Guidance indicates a "best practice" is to develop a two-way communication system which employees can use to self-report if sick or were exposed to COVID-19, and which can also be used by employers to notify employees of exposures or closures.



being exposed to or contracting COVID-19 in the workplace, and aid them in implementing a COVID-19 prevention program to address those risks. This is the first step in addressing the points detailed in President Biden's [Executive Order](#) issued on January 21, 2021. In the coming weeks, OSHA will also be:

- **Reviewing OSHA COVID-19 enforcement efforts** and identifying any changes that could be made to better protect workers and ensure equity in enforcement;
- **Launching a national program focusing COVID-19 OSHA enforcement efforts** on violations that put largest number of employees at risk; and
- **Coordinating with all OSHA regional offices and the Department of Labor's Office of Public Affairs and Office of Public Engagement on a multilingual outreach** campaign informing workers and their representatives of their rights under applicable law.

Mr. Frederick and Ms. Smith answered several questions during the briefing:

Q: Will guidance be tailored to specific industries?

A: This Revised Guidance is inclusive of all workers. Additional guidance will be issued in the future that is tailored to specific industries.

Q: Some States have enacted standards addressing COVID-19 controls. Will OSHA be working with them to ensure standards are consistent?

A: OSHA is in communication with these States (4) and will collaborate with them as necessary.

Q: With regard to issuing any emergency temporary standards – is there any information on the need to issue them and, if so, what is the timing?

A: OSHA has updated the Revised Guidance which was the first step in addressing the points in the Executive Order. OSHA is continuing to work with stakeholders to enhance workplace safety and address the other points in the Executive Order.

Q: Respiratory protection – are there steps to ensure there is adequate respiratory protection available, and, if required, will it be available?

A: The Revised Guidance continues to discuss "face protection" which is not the same as PPE respiratory protection. OSHA has worked with suppliers to ensure that, if needed, PPE respiratory protection will be available.



Q: The Revised Guidance states employers are to provide information on the vaccine and its benefits. Will OSHA be providing that information?

A: No. OSHA is not in the position to provide information on the vaccine. OSHA may provide a link to the Food and Drug Administration and the [CDC](#) who have such information available.

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We trust this update is helpful. If you have any questions, please do not hesitate to contact us.

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