



## Executive Order Signed by Biden and New Guidance Issued by OSHA

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In a recent executive order signed by President Joe Biden, the Occupational Safety & Health Administration (OSHA) was directed to issue guidance to employers on protecting workers from COVID-19. The executive order required OSHA to release guidance within two weeks to employers on workplace safety during the pandemic and to evaluate whether any emergency temporary standards are needed. The agency has until March 15, 2021, to consider the need for a COVID-19 emergency OSHA standard, which could include mandatory mask-wearing in the workplace.

In response to the executive order, on January 29, 2021, OSHA issued updated worker safety guidance to help better identify risks, reduce exposures, and curtail new cases of COVID-19. The guidance issued is not a standard or regulation and it technically does not create any new legal obligations. Rather, it contains recommendations based on existing information and OSHA standards. Expect more information about a potential emergency standard in the coming weeks.

U.S. Compliance is prepared to assist you with the information contained in the new OSHA guidance. It includes information in areas such as:

- The Roles of Employers and Workers in Response to the Pandemic;
- Key Elements to an Effective COVID-19 Prevention Program;
- Measures to reduce the spread of COVID-19;
- Methods to improve ventilation, and
- A review of controls such as the installation of barriers, using face coverings/PPE, and maintaining strong hygiene and routine cleaning processes.

Keep in mind that OSHA has also recently released guidance documents that outline the most common citations issued to employers over the past 10 months related to COVID-19. These guidance documents are available on OSHA's website at [www.osha.gov](http://www.osha.gov) in the form of a one-page summary with a more detailed six-page version available as well. Some of the more common violations observed include the following:

- Medical evaluations not provided before a worker was fit-tested or used the respirator
- Fit testing not performed appropriately for tight-fitting facepiece respirators



- Lack of a written respiratory protection program or missing information as to when/where respirators were required for use
- Failure to provide employees Appendix D of the respiratory standards prior to voluntary use
- Lack of training on respiratory use or failure to train new employees who wear respirators
- Recordkeeping violations associated with work-related injuries, illnesses, fatalities, and hospitalizations
- Personal Protective violations, such as not providing or maintaining PPE in a sanitary and reliable condition
- Improper documentation of hazard assessment
- ...as well as a host of general duty clause violations

As part of the concerted Federal effort to increase employee Health & Safety, President Biden has named some new members to OSHA's leadership team:

- James Frederick as the Deputy Assistant Secretary for Occupational Safety & Health
- Joseph "Chip" Hughes as the Deputy Assistant Secretary for Emergency & Pandemic Response
- The Assistant Secretary of Labor for OSHA (Administrator of OSHA) remains open at this time and may dictate the eventual direction taken by this team

This change in leadership, along with the signed executive order and recent guidance from OSHA, points to a strong likelihood of an emergency federally-mandated standard governing the management of COVID-19 being put into effect. Regardless of who is nominated, it is likely that the emergency standard will closely resemble one of the OSHA state program emergency standards (VI, MI, CA, OR) already in place.

Based on the information shared to this point and what certain states have already promulgated, it is likely that the following may be included in either an emergency COVID-19 standard or the next legislative relief package.

Very Likely:

- Documented infection control program that includes outbreak response requirements and reporting requirements
- Documented risk assessment process with identified mandatory controls
- Employee COVID-19 awareness training that includes the basic infection control information and related benefits available to employees



Likely:

- Employer-provided COVID-19 testing – for outbreaks
- Extended paid leave for COVID-19 related illness or quarantine

Possibly:

- Liability shield related to COVID-19 vaccination and adverse reactions for employers

Finally, it is likely that when/if the emergency standard goes into effect, it will be immediately enforceable by OSHA. With this said, it remains important for all employers to be actively addressing COVID-19 as a hazard in their facilities in line with Section 5(a) (1) of the Occupational Safety and Health Act (the “General Duty Clause”). This requires an employer to furnish to its employees: *“employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees.”*

Key measures for employers to include in their infectious disease prevention efforts are:

- Implementation of an Infection Control and Prevention Program
- Employee training
- Face coverings and PPE policies
- Social distancing measures
- Barriers and engineering controls to reduce exposure
- Symptom screening/notification
- Sanitation procedures
- Ventilation
- Use of no-touch technology
- Limiting occupancy
- Hazard reporting processes
- Inspection and accountability measures, etc.

If you need additional assistance, please do not hesitate to reach out to U.S. Compliance for support at [info@uscompliance.com](mailto:info@uscompliance.com). We are well prepared to react and assist at both the State and Federal levels. Whether you need materials, guidance documents, training, research, or technical support, we have numerous resources and personnel prepared to help. Our goal is to help guide you through this next stage of the pandemic, reduce your organizational risk, and partner in keeping you and your employees safe.