

## OSHA Says Workers Should Wear Masks After Virus Vaccine

By **Tim Ryan**

*Law360 (January 29, 2021, 5:52 PM EST)* -- Employers should still require workers to wear masks and follow other practices meant to stem the spread of COVID-19 even after they have been vaccinated, the Occupational Safety and Health Administration said in updated guidance released Friday.

The new guidance does not impose new legal requirements on employers, but provides a detailed list of practices OSHA suggests they follow in order to reduce the risk of the virus spreading in their workplaces. Many of the recommendations in the updated guidance have become familiar fixtures of businesses operating during the pandemic, including requiring face coverings and having workers stay home if they were or might have been exposed to the virus.

As vaccination programs ramp up across the country, OSHA recommends employers continue having vaccinated and unvaccinated workers follow the same safety measures, in light of the Centers for Disease Control and Prevention's guidance that it doesn't have enough information yet about how vaccines impact transmission of the virus.

"Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not evidence that COVID-19 vaccines prevent transmission of the virus from person to person," the guidance said.

In addition to its guidance on the treatment of workers who have been vaccinated, OSHA also said employers should take steps to ensure workers are not retaliated against if they raise concerns about the safety of their workplace. It also recommends employers set up a process for workers to anonymously share any concerns they might have about COVID-19 safety.

The guidance builds on previous recommendations that the workplace safety agency housed within the U.S. Department of Labor has issued since March on how employers should address the ongoing pandemic. President Joe Biden last week issued an executive order instructing OSHA to revise its guidance to employers on COVID-19 and consider issuing emergency temporary standards for COVID-19, which, unlike the guidance, would be enforceable.

"The recommendations in OSHA's updated guidance will help us defeat the virus, strengthen our economy and bring an end to the staggering human and economic toll that the coronavirus has taken on our nation," M. Patricia Smith, senior counselor to the secretary of labor, said in a statement.

The OSHA guidance on vaccines is in line with the CDC recommendations that people continue wearing masks and maintaining distance from others after they are vaccinated. The CDC website says it is still not certain that the vaccines prevent people from spreading the virus to others, even if they keep vaccinated people from getting sick.

In a statement to Law360, Jim Frederick, principal deputy assistant secretary of labor for OSHA, said the guidance rolled in recommendations released by other federal agencies, including the CDC. Frederick also emphasized that OSHA would revise the guidance as needed "based on stakeholder feedback, enforcement experience and comments."

The guidance further says employers should provide employees with information about the "benefits and safety of vaccinations" and ensure those who are eligible can receive the vaccine at no cost.

Other details in the guidance include encouraging employers to ensure their absence policies are "non-punitive" for workers who need to stay home or quarantine after a potential exposure, including by providing paid sick leave and allowing for telework when possible.

Jon Snare, a partner at Morgan Lewis & Bockius LLP, said the new guidance is more comprehensive than previous versions, which were generally more focused on specific industries, and will likely serve as a baseline for the emergency temporary standards the agency is expected to issue.

"It's a big rollout and it's a big signal for employers that everybody needs to pay attention to this," Snare told Law360.

--Editing by Leah Bennett.