



The Biden Administration

Evolving Landscape:
OSHA and CDC COVID-19 Guidance

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Seyfarth Shaw LLP

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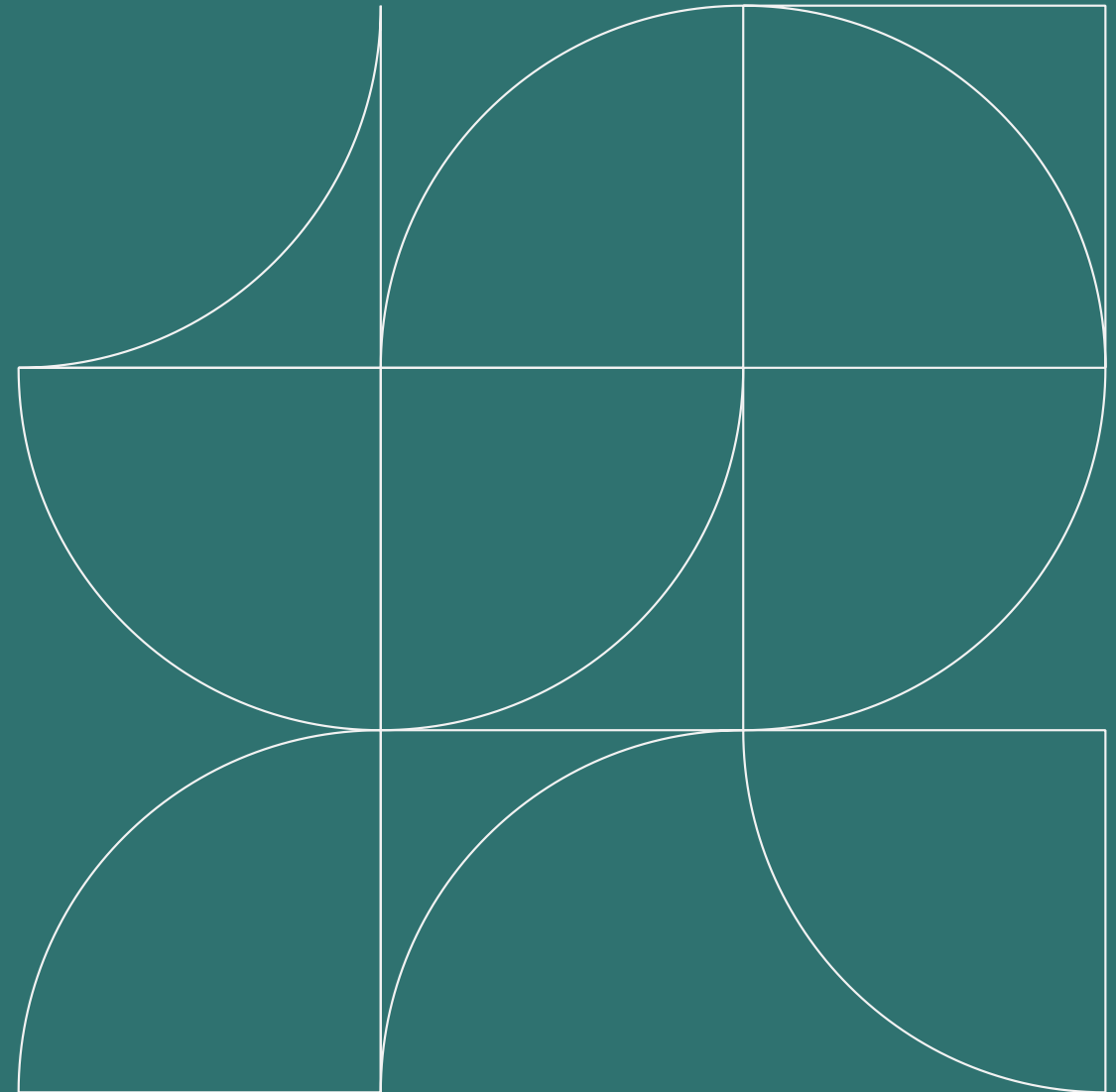
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Agenda

- **OSHA: COVID-19 ETS Status**
- **CDC Guidance and Workplace Impacts**
- **OSHA Enforcement**

OSHA: COVID-19 ETS Status



Vaccination Numbers Continue to Rise

Over **285 million doses** administered.

President Biden reached his goal to administer **200 million doses** in his first 100 days.

61% of the U.S. population, 18 and older, has received one dose.

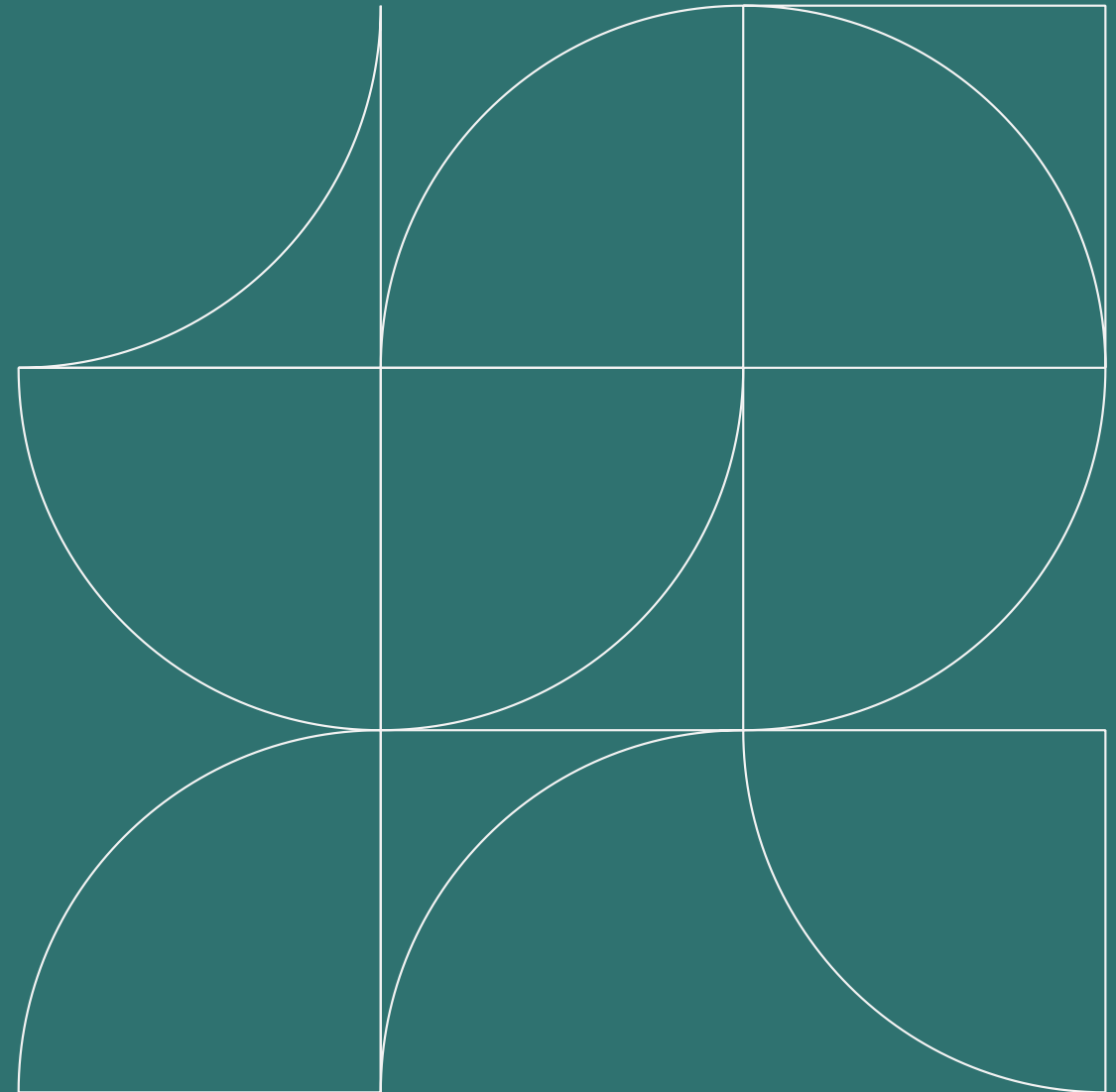
85.4% of the U.S. population, 65 and older, has received one dose.

Downward trend in the 7-day rolling average.

Belated COVID-19 Emergency Temporary Standard?

- President Biden’s March 15, 2021 deadline for OSHA to issue a **COVID-19 ETS** came and went . . . over two months ago.
- On April 26, OSHA finally signaled the **delayed issuance** many were expecting.
- Expect that OSHA may:
 - Require employers to follow CDC guidance;
 - Rely, to some degree, on its January 29, 2021 publication, “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace,” in developing ETS mandates.
 - Review and incorporate provisions from state ETSs and final standards into the federal ETS.

CDC Guidance and Workplace Impacts



Revised CDC Guidance on COVID Precautions and Protocols

CDC COVID guidance recommends COVID-19-related precautions and protocols, including:

- masking
- social distancing
- hand hygiene
- contact tracing
- barriers/partitions
- employee training
- sick leave and supportive policies
- sanitation
- ventilation
- visitor restrictions
- travel restrictions
- wellness screenings

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Revised CDC Guidance on COVID Precautions and Protocols

- Revised guidance for Fully Vaccinated Individuals
 - Vaccinated individuals do not need to mask or social distance for outdoor or indoor activities in most settings.
- Revised OSHA Guidance
 - Adopts CDC guidance by reference.
 - “OSHA is reviewing the recent CDC guidance and will update our materials on this website accordingly. Until those updates are complete, please refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.”

Choosing Safer Activities

Accessible link: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/participate-in-activities.html>

	Unvaccinated People	Examples of Activities	Fully Vaccinated People
Outdoor			
Safest		Walk, run, wheelchair roll, or bike outdoors with members of your household	
		Attend a small, outdoor gathering with fully vaccinated family and friends	
		Attend a small, outdoor gathering with fully vaccinated and unvaccinated people	
Less Safe		Dine at an outdoor restaurant with friends from multiple households	
		Attend a crowded, outdoor event, like a live performance, parade, or sports event	
Indoor			
Less Safe		Visit a barber or hair salon	
		Go to an uncrowded, indoor shopping center or museum	
		Ride public transport with limited occupancy	
Least Safe		Attend a small, indoor gathering of fully vaccinated and unvaccinated people from multiple households	
		Go to an indoor movie theater	
		Attend a full-capacity worship service	
		Sing in an indoor chorus	
Least Safe		Eat at an indoor restaurant or bar	
		Participate in an indoor, high intensity exercise class	

Get a COVID-19 vaccine

Prevention measures not needed

Take prevention measures
Wear a mask, stay 6 feet apart, and wash your hands.

- Safety levels assume the recommended prevention measures are followed, both by the individual and the venue (if applicable).
- CDC cannot provide the specific risk level for every activity in every community. It is important to consider your own personal situation and the risk to you, your family, and your community before venturing out.

Considerations for Employer Policies

Option 1: Retaining current COVID-19 precautions and protocols

Option 2: Revising masking and social distancing for vaccinated employees

Option 3: Revising additional COVID-19 precautions and protocols (e.g. masking and distancing for all employees; eliminating all COVID precautions and protocols)



Areas of Elevated Liability

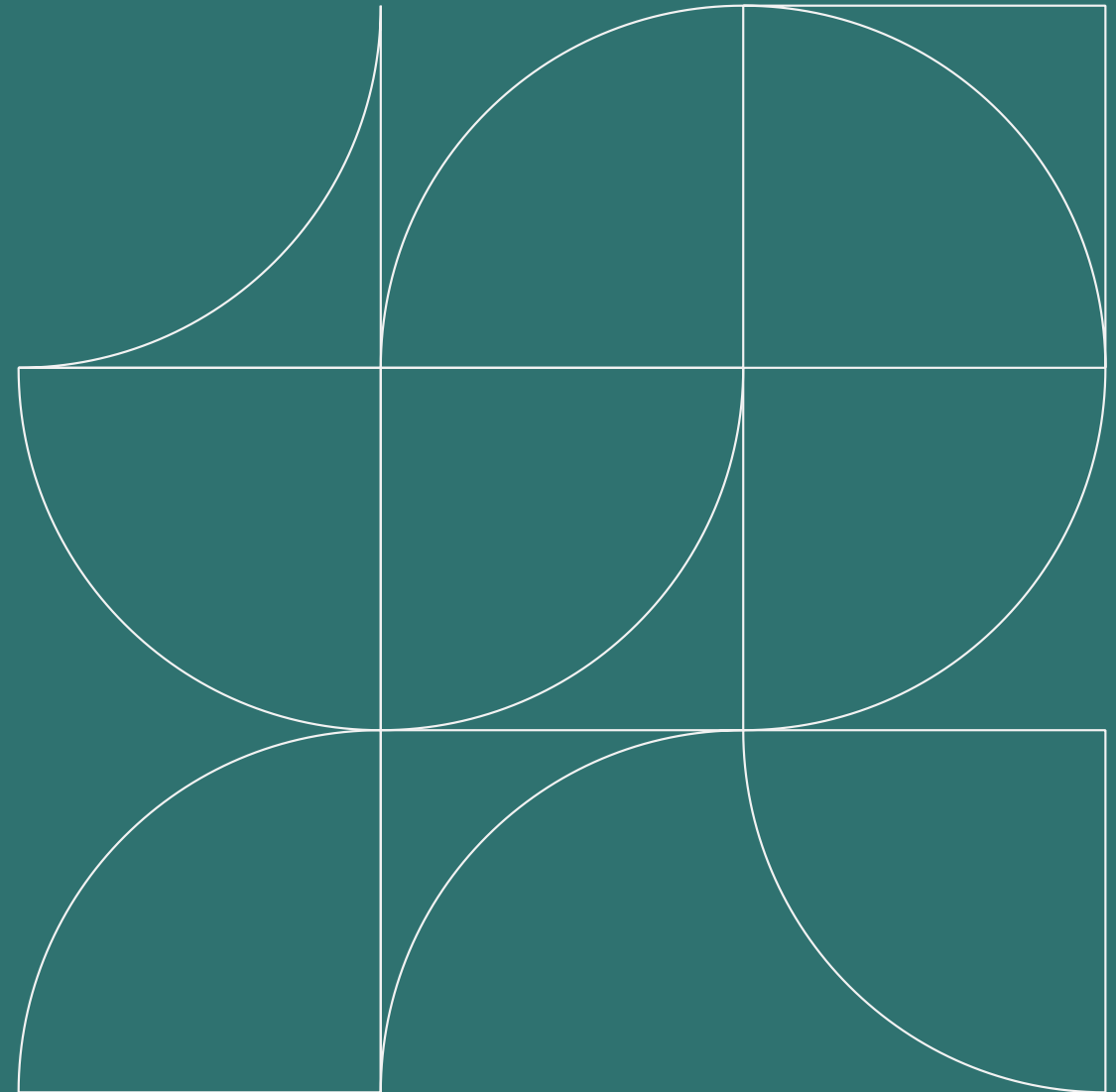
1. State and local rules and guidance
2. Complaints to OSHA, state agencies, internal
3. Worker's compensation
4. Third party torts
5. OSHA enforcement

Mitigation tools:

- A. Vaccine-verification*
- B. Wellness screening*
- C. Visitor control*



OSHA Enforcement



COVID-19 National Emphasis Program (NEP)

- On March 12, OSHA announced **COVID-19 National Emphasis Program** “to ensure that employees in high-hazard industries or work tasks are protected from the hazard of contracting SARS-CoV-2.”
- Targeted industries include **healthcare, meat processing, grocery stores, warehousing and storage, restaurants, and correctional institutions.**
- The NEP will also focus on **preventing and punishing retaliation** against workers who complain about unsafe or unhealthy conditions.

COVID-19 NEP Target Industries

Healthcare	Non-Healthcare
Offices of Physicians (except Mental Health)	Meat Processed from Carcasses
Offices of Dentists	Animal (except Poultry) Slaughtering
Home Health Care Services	Poultry Slaughtering
Ambulance Services	Supermarkets and Other Grocery (except Convenience) Stores
General Medical and Surgical Hospitals	Discount Department Stores
Psychiatric and Substance Abuse Hospitals	General Warehousing and Storage
Specialty Hospitals	Temporary Help Services
Nursing Care Facilities (Skilled Nursing Facilities)	Full-Service Restaurants
Residential intellectual and Developmental Disability Facilities	Limited-Service Restaurants
Continuing Care Retirement Communities	Correctional Institutions
Assisted Living Facilities for the Elderly	

Secondary NEP Target Industries

Agriculture, Forestry, Fishing and Hunting
Food and Agriculture
Construction of Buildings
Heavy and Civil Engineering Construction*
Specialty Trade Contractors
Food Manufacturing
Beverage Manufacturing
Wood Product Manufacturing
Paper Manufacturing
Asphalt Paving, Roofing, and Saturated Materials Manufacturing
Other Petroleum and Coal Products Manufacturing
Chemical Manufacturing
Plastics and Rubber Product Manufacturing
Nonmetallic Mineral Product Manufacturing
Primary Metal Manufacturing

Fabricated Metal Product Manufacturing
Industrial Machinery Manufacturing
Computer and Electronic Product Manufacturing
Electrical Equipment, Appliance, and Component Manufacturing
Transportation Equipment Manufacturing*
Wood Kitchen Cabinet and Countertop Manufacturing
Other Miscellaneous Manufacturing
Nursery, Garden Center, and Farm Supply Stores
Additional Food and Beverage Stores
General Merchandise Stores, including Warehouse Clubs and Supercenters
Urban Transit Systems
Interurban and Rural Bus Transportation
School and Employee Bus Transportation
Special Needs Transportation
Postal Service*
Industrial Design Services
Other Electronic and Precision Equipment Repair and Maintenance
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance

Interim Enforcement Response Plan (IERP)

- Updates COVID-19 inspection procedures
- Combined with NEP, may incorporate **more on-site inspections**
 - OSHA will prioritize COVID-19-related inspections involving **deaths or multiple hospitalizations** due to occupational exposures to COVID-19
- Added focus to ensure workers are **protected from retaliation**
- Effective immediately and expires in 12 months

- Practically speaking, OSHA has not conducted large numbers of COVID-19 inspections outside of certain industries
- Brand new recordkeeping guidance: **Employers do not need to record adverse vaccine reactions on OSHA 300 Log**

Coming Soon to a Worksite Near You

- **Doug Parker**, Cal/OSHA chief, nominated as OSHA Assistant Secretary on April 9
- Current Leadership:
 - **James Frederick**, Principal Deputy Assistant Secretary
 - **Amanda Edens**, Deputy Assistant Secretary
 - **Joseph Hughes, Jr.**, Deputy Assistant Secretary for Pandemic and Emergency Response
 - **Leah Ford**, Chief of Staff
 - **Ann Rosenthal**, Senior Advisor

**Thank You for
Attending**

