



# Legal Considerations in Safely Returning to Work

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# Agenda

This webinar will focus on:

- Compliance with OSHA guidance in maintaining a safe workforce upon office re-opening.
- The role of state and local law in implementing a return-to-work strategy.
- Mandating workforce vaccinations and proof of vaccinations – EEOC Requirements
- Reconfiguring the office layout to promote safety, requiring masks, sanitation and other practical issues.
- Employer liability for workplace COVID-19 exposure.



# **Compliance with OSHA guidance in maintaining a safe workforce upon office re-opening**



# Most Commonly Issued COVID-19 Citations



- Use of respiratory protection and PPE most commonly-cited.
- Many employers issued respirators to employees without required medical evaluation and without establishing and implementing a written respiratory protection program.



# Emergency Temporary Standard & National Emphasis Program: COVID-19



- Biden was expected to push for a mandatory emergency temporary standard.
  - OSHA had until March 15 under executive order
- Instead OSHA issued a National Emphasis Program (NEP) targeting certain industries.
- NEPs are temporary programs that focus OSHA's resources on particular hazards and designated high-hazard industries.
- OSHA will use targeted inspections, outreach, and compliance assistance to identify and reduce or eliminate COVID-19 exposures in the workplace.
- Highest priority on fatality inspections related to COVID-19 and then to other unprogrammed inspections alleging employee exposure to COVID-19 related hazards.

# OSHA's NEP: COVID-19

- Primary targets determined in Appendix A:
  - Meat and Poultry processing
  - Supermarkets
  - Department Stores
  - Warehouse and Storage
  - Full-Service Restaurants
  - Limited-Service Restaurants
- Secondary targets
  - Heavy and Civil Engineering Construction\*
  - Asphalt Paving, Roofing, and Saturated Materials Manufacturing
  - Nonmetallic Mineral Product Manufacturing





# **OSHA's COVID-19 Emergency Temporary Standard Subpart U**

# OSHA's Emergency Temporary Standard ("ETS") for COVID-19

- **June 10, 2021**: OSHA issued COVID-19 ETS Subpart U for healthcare settings.
- The ETS is effective immediately upon publication in the Federal Register and employers must comply with most provisions within 14 days, and with provisions involving physical barriers, ventilation, and training within 30 days.
- OSHA has included a provision for discretionary enforcement for employers making a good faith effort to comply with the ETS.
- There is no indication when it will be published in the Federal Register.



# Understanding COVID-19 ETS - Subpart U



The COVID-19 ETS is one standard with multiple sections contained in Subpart U.

- 1910.502 – Healthcare: Except as otherwise provided in the standard, applies to all settings where any employee provides *healthcare services* or *healthcare support services*.
- 1910.504 – Mini Respiratory Protection Program: Addresses limited requirements for situations where respirators are used in accordance with specific provisions in 1910.502.

## COVID-19 ETS - Subpart U Cont'd.



- 1910.505 – Severability: Provides that each section of Subpart U and each provision within those sections is separate and severable from the other sections and provisions.
- 1910.509 – Incorporation by Reference: Contains materials adopted as part of the ETS, including: Centers for Disease Control and Prevention (CDC) guidance, consensus standards for personal protective equipment (PPE), and EPA's list of approved disinfectants.

# Who Is Covered?

The ETS covers healthcare settings where any employee provides “***healthcare services***” or “***healthcare support services***.”

- “Healthcare services” - services that are provided to individuals by professional healthcare practitioners for the purpose of promoting, maintaining, monitoring, or restoring health.
- “Healthcare support services” - services that facilitate the provision of healthcare services.
- “Ambulatory care” - healthcare services performed on an outpatient basis, without admission to a hospital or other facility, but does not include home healthcare settings for the purposes of the ETS.

## Who Is Covered? Contd.



- Where a healthcare setting is embedded within a non-healthcare setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), the ETS applies **only** to the embedded healthcare setting and not to the remainder of the physical location.
- Where emergency responders or other licensed healthcare providers enter a non-healthcare setting to provide healthcare services, the ETS applies **only** to the provision of the healthcare services by that employee.



## Who Is *NOT* Covered?



The ETS **does not** apply to the following:

- The provision of first aid by an employee who is not a licensed healthcare provider;
- The dispensing of prescriptions by pharmacists in retail settings;
- Healthcare support services not performed in a healthcare setting (e.g., off-site laundry, off-site medical billing);
- Telehealth services performed outside of a setting where direct patient care occurs;

## Who Is *NOT* Covered? Cont'd.

The ETS **does not** apply to the following:

- Well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- Home healthcare settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;



## Who Is *NOT* Covered? Cont'd.



The ETS **does not** apply to the following:

- In well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, the requirements in the ETS for personal protective equipment (PPE), physical distancing, and physical barriers (paragraphs (f), (h), and (i), respectively) do not apply to employees who are fully vaccinated (paragraph (a)(4)).



# ETS's COVID-19 Prevention Plan



- OSHA's ETS includes a requirement that employers implement a COVID-19 prevention plan.
- OSHA's January 29, 2021 guidance indicated that a COVID-19 prevention program is the most effective way to mitigate the spread of COVID-19 at work.
- Followed states such as California and Virginia that have adopted standards requiring many employers to implement a COVID-19 prevention program.



## COVID-19 Prevention Program Cont'd.



- Assignment of a workplace coordinator to address COVID-19 issues.
- Identification of where and how workers might be exposed to COVID-19 at work through a hazard assessment.
- Identification of measures that will limit the spread of COVID-19 in the workplace, including engineering hazards, administrative policies and additional personal protective equipment.
- Patient screening and management.
- Develop and implement policies and procedures to adhere to Standard and Transmission-Based precautions based on CDC guidelines.

# COVID-19 Prevention Program Cont'd.

- Provide and ensure employees wear appropriate PPE.
- Aerosol-generating procedures on a person with suspected or confirmed COVID-19.
- Performing enhanced cleaning and disinfection after a suspected or confirmed case of COVID-19.
- Keep people at least 6 feet apart when indoors.
- Physical barriers: Install cleanable or disposable solid barriers at each fixed work location in non-patient care areas where employees are not separated from other people by at least 6 feet.

# COVID-19 Prevention Program Cont'd.

- Ensure proper ventilation.
- Conduct health screening and medical management.
- Provide reasonable time and paid leave for vaccinations and vaccine side effects.
- Ensure all employees receive training so they comprehend COVID-19 transmission, tasks and situations in the workplace that could result in infection, and relevant policies and procedures.

# COVID-19 Prevention Program Cont'd.



- Inform employees of their rights to the protections required by the standard and do not discharge or in any manner discriminate against employees for exercising their rights under the ETS or for engaging in actions required by the standard.
- Requirements must be implemented at no cost to employees.
- Establish a COVID-19 log (if more than 10 employees) of all employee instances of COVID-19 without regard to occupational exposure and follow requirements for making records available to employees/representatives.
- Report work-related COVID-19 fatalities and in-patient hospitalizations to OSHA.

## COVID-19 Testing Pay Requirements Under ETS (29 C.F.R. § 1910.502(a))

If an employer requires employees to be tested for COVID-19, it must pay the following:

- Cost of the test itself;
- Any time spent getting the test or time spent waiting for test results before the employee is allowed to enter the workplace; and
- If getting the test requires the employee to travel to a location that is not at the workplace, the employer must pay the employee for the time spent traveling and for any travel costs (e.g., transportation fare, gasoline).



# Medical Removal Benefits Under ETS



Who Must Pay Medical Removal Protection (MRP) Benefits and what are obligations?

- Employers with 10 or fewer employees on the date that the ETS becomes effective are not required to maintain pay for removed employees.
- Employers with more than 10 employees are obligated to pay MRP benefits to a removed employee.

# Health Screening Requirements Under ETS

- Employers have discretion in choosing whether to implement self-monitoring or in-person screening
- Employers who choose to conduct in-person employee screening for COVID-19 symptoms may use methods such as temperature checks and asking the employee if they are experiencing symptoms consistent with COVID-19.
- Employers should conduct this screening before employees come into contact with others in the workplace, such as co-workers, patients, or visitors.

# Notification Requirements Under ETS

- Employees must **promptly** notify their employer when they learn they are COVID-19 positive (as confirmed by a positive test for COVID-19 or when diagnosed with COVID-19 by a licensed healthcare provider).
- “Promptly” means:
  - For employees not at the workplace - Notifying the employer before the employee is scheduled to start their shift or return to work.
  - For employees in the workplace - Notifying the employer as soon as safely possible.

# COVID-19 Positive Person Notification Requirements under ETS

The employer must notify:

- Each employee who has been in close contact with the COVID-19 positive person in the workplace.
- All other employees who worked in a well-defined portion of the workplace (e.g., a particular floor) in which the COVID-19 positive person was present during the potential transmission period.
- Other employers whose employees have been in close contact with the COVID-19 positive person, or worked in a well-defined portion of the workplace (e.g., a particular floor) in which that person was present, during the potential transmission period.
- Employers **are not** required to notify employees: (1) who were wearing respirators and any other required PPE and (2) the notification provisions are not triggered by the presence of a patient with confirmed COVID-19 in a workplace where services are normally provided to suspected or confirmed COVID-19 patients.



# **OSHA's Updated COVID-19 Guidance for Non-Healthcare Settings**

# Non-Healthcare Guidance from OSHA

- June 10, 2021: Guidance focuses primarily on protecting **unvaccinated or otherwise at-risk workers** in their workplaces (or well-defined portions of workplaces).
- Reasoning - CDC's [Interim Public Health Recommendations for Fully Vaccinated People](#) explain that under most circumstances, fully vaccinated people need not take all the precautions that unvaccinated people should take and can resume most activities without wearing masks or physically distancing



## OSHA and the CDC – Non-HealthCare



- Fully vaccinated people can refrain from being tested or quarantining following a known exposure to a COVID-19-positive person and can be excluded from routine screening tests.
- No current time limit on “fully vaccinated status.”

# Who Are At Risk Workers?

- OSHA specifically identifies:
  - Workers with a prior transplant;
  - Prolonged use of corticosteroids or other immune-weakening medications, which may affect workers' ability to have a full immune response to vaccination;
  - Individuals identified in the CDC's guidance on those with underlying medical conditions.
- Workers with disabilities may be legally entitled to reasonable accommodations under the ADA that protect them from the risk of contracting COVID-19 if, for example, they cannot be protected through vaccination, cannot get vaccinated, or cannot use face coverings.
- Employers should consider taking steps to protect these at-risk workers as they would unvaccinated workers, regardless of their vaccination status.

# OSHA ENCOURAGES VACCINATIONS

- OSHA has recognized vaccine efficacy.
- Vaccination is the key in a multi-layered approach to protecting workers.
- Vaccines authorized by the U.S. Food and Drug Administration in the United States are highly effective at protecting most fully vaccinated people against symptomatic and severe COVID-19.
- OSHA encourages employers to take steps to make it easier for workers to get vaccinated.
- However, for workers who are unvaccinated or who are otherwise at-risk, OSHA recommends implementing multiple layers of controls.

# Guidance for Employees

Encourage unvaccinated and at-risk workers to help protect themselves by:

- Identifying opportunities to get vaccinated. Inform employees about opportunities for paid leave, if necessary, to get vaccinated and recover from any side effects.
- Properly wearing a face covering over your nose and mouth.
- If working outdoors employees may opt not to wear face coverings in many circumstances; however, employees should be supported in continuing face covering use if they choose, especially if they work closely with other people.
- Staying far enough away from other people so that they are not breathing in particles produced by other people – generally at least 6 feet (about 2 arm lengths)



# Guidance for Employees



Encourage unvaccinated and at-risk workers to help protect themselves by:

- Performing work tasks, holding meetings, and taking breaks outdoors when possible.
- Participating in any training offered by you to learn how rooms are ventilated effectively and notifying the building manager if they see vents that are clogged, dirty, or blocked by furniture or equipment.
- Practicing good personal hygiene and washing their hands often.
- Always covering their mouth and nose with a tissue, or the inside of their elbow, when they cough or sneeze, and do not spit.
- Monitoring their health daily and be alert for COVID-19 symptoms (e.g., fever, cough, or shortness of breath).

# Guidance For Employers

Most employers no longer need to take steps to protect their workers from COVID-19 exposure where **all** employees are fully vaccinated.

Key controls to help protect unvaccinated and at-risk workers include:

- Separating from the workplace all infected people and people experiencing COVID symptoms, and any unvaccinated people who have had a close contact with someone with COVID-19.
- Implementing physical distancing
- Maintaining ventilation systems
- Properly using face coverings or personal protective equipment (PPE) when appropriate.



# Guidance For Employers



Key controls to help protect unvaccinated and at-risk workers include:

- Granting paid time off for employees to get vaccinated.
- Instructing any workers who are infected, unvaccinated workers who have had close contact with someone who tested positive for COVID-19, and all workers with COVID-19 symptoms to stay home from work.
- Implementing physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas
- Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks, unless their work task requires a respirator or other PPE.
- Educate and train workers on your COVID-19 policies and procedures using accessible formats and in language they understand.

# Guidance For Employers

- Suggest that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces if there are unvaccinated or otherwise at-risk workers in the workplace who are likely to interact with these customers, visitors, or guests.
- Maintain Ventilation Systems - Improving ventilation is a key engineering control that can be used as part of a layered strategy to reduce the concentration of viral particles in indoor air and the risk of virus transmission to unvaccinated workers in particular.
- Perform routine cleaning and disinfection - If someone who has been in the facility within 24 hours is suspected of having or confirmed to have COVID-19, follow the CDC cleaning and disinfection recommendations.

# Guidance For Employers: Record and Report

- Employers subject to OSHA recordkeeping requirements must determine whether employees' COVID-19 cases are work-related and, if so, record them on the OSHA 300 log if:
  - (1) the case is a confirmed case of COVID-19; (2) the case is [work-related](#) (as defined by [29 CFR 1904.5](#)); and (3) the case involves one or more [relevant recording criteria](#) (set forth in [29 CFR 1904.7](#)) (e.g., medical treatment, days away from work).
- Follow the requirements in [29 CFR 1904](#) when [reporting COVID-19 fatalities and hospitalizations to OSHA](#).
- Report outbreaks to health departments as required and support their contact tracing efforts.



# Guidance For Employers: Adverse Reactions



- For adverse reactions to vaccines:
  - OSHA will not enforce 29 CFR 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through **May 2022**.

# Guidance For Employers: Retaliation and Discrimination

- Implement protections from retaliation and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.
- Be aware that Section 11(c) of the Act prohibits reprisal or discrimination against an employee for speaking out about unsafe working conditions or reporting an infection or exposure to COVID-19 to an employer.
- [29 CFR 1904.35\(b\)](#) also prohibits discrimination against an employee for reporting a work-related illness.

# Higher-Risk Workplaces

- OSHA specifically identifies:
  - Manufacturing
  - Meat and Poultry Processing
  - High-volume retail and grocery
  - Seafood processing
- Where there are unvaccinated or at-risk workers:
  - Stagger break times in high-population workplaces
  - Stagger workers' arrival and departure times
  - Provide visual cues to maintain physical distancing

# Guidance For Employers: Reminder of OSHA Standards

- *Follow other applicable mandatory OSHA standards.*
- Specifically references:
  - PPE (29 CFR 1910, Subpart I (e.g., [1910.132](#) and [133](#)))
  - Respiratory protection ([29 CFR 1910.134](#))
  - Sanitation ([29 CFR 1910.141](#))
  - Bloodborne pathogens: ([29 CFR 1910.1030](#))
  - Employee access to medical and exposure records ([29 CFR 1910.1020](#)).
  - Where the ETS does not apply, employers are required under the General Duty Clause, [Section 5\(a\)\(1\)](#) of the OSH Act, to provide a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

# Mandating workforce vaccinations and proof of vaccinations – EEOC Requirements



# Why is Incentive Guidance Important?



- EEOC didn't want employers to force employees to make medical-related decisions through the use of incentives.
- Too significant of an incentive could coerce employees to participate
- Potential legal violations if employees are "forced" to disclose protected medical information to gain the incentive.
- Prior proposed de minimis rule withdrawn.



# EEOC Guidance on Vaccine Incentives



- May 28, 2021 update to COVID-19 Technical Guidance
  - Option 1: Employee voluntarily provides documentation confirming voluntary vaccination.
    - Employer can offer any incentive with no apparent limitations.
    - Employee must receive vaccination on their own from a third-party
    - Third-party cannot be agent of your organization.
  - Option 2: Employer (or entity acting on employer's behalf) administers vaccine.
    - Employer can offer incentives
    - Incentives cannot be so substantial in value to be considered coercive.

# Incentives Option 1-What is an Agent?

- Individual or entity having the authority to act on behalf of, or at the direction of, the employer.
  - Onsite nurse, medical staff, etc.
- EEOC prefers employers to stay as far away from employee medical examinations as possible.
  - Administering vaccines requires necessary pre-shot screening questions.
  - Could reveal information it would rather you not obtain.
- Can ask whether employee has been vaccinated, but should stop there.

## Incentives Option 2-What is “Substantial”?

- EEOC does not provide detail or a definition.
- “Substantial” would permit you to offer incentives at some level higher than a de minimis amount (i.e., water bottle).
- Higher value = greater risk your program will be seen as unnecessarily coercive.
- Factors to consider:
  - geographic location
  - your industry,
  - the median pay of your workforce, and other relevant factors.



# Requiring Vaccines



- EEOC's FAQs were issued on December 16, 2020 and updated May 28, 2021.
- EEOC makes clear that employers can require employees to be vaccinated as long as the employer complies with the reasonable accommodation provisions of the ADA (medical exemptions) and Title VII (religious exemptions).
- There have been a handful of challenges to the mandatory vaccination requirement. On June 15, 2021, in the first case to decide the issue, a Texas federal court dismissed a challenge to the mandatory vaccination requirement by employees of Houston Methodist Hospital.

# EEOC Guidance Regarding COVID Vaccines

- Issued on December 16, 2020.
- Employers *can* **require** workers to get COVID-19 vaccine.
  - **EUA** status does not negate this.
  - Consider the employee’s duties and work setting.
- When may an employee be “*excluded from the workplace*” for not being vaccinated?
  - **Direct Threat** – would an unvaccinated worker pose significant risk of substantial harm, based on reasonable medical judgment, which cannot be eliminated by a workplace accommodation? This is a high standard.
  - Vaccination as safety **Qualification Standard** – requires an objective basis for the standard, historically tied to jobs protecting public safety. Standard must be job-related and consistent with business necessity.

# Practical Considerations: What is the Employer's "Brand"?

- Public Relations
  - Social Media Presence
  - Marketing Strategies
  - Socio-economic environment in which business operates
  - Demographics the business targets/attracts
- Employee Morale → You Know Your Employees the Best
  - Given the environment of your Company and workplace environment, what is the risk of a large number of employees refusing (greater than 20%) → upset employees → impact on productivity OR
  - ADVERSE: Upset vaccinated employees exposed to unvaccinated

# Requiring Proof of Vaccines

- Asking or requiring an employee to show proof of receipt of a COVID-19 vaccination is perfectly okay because it is NOT a disability-related inquiry
- Simply requesting proof of vaccination is not likely to elicit information about a disability
- Employer should not ask why an individual did not receive a vaccination. Doing so may elicit information about a disability.
- All such questions should be asked only through Human Resources and the information should be maintained as confidential.
- It is not an invasion of privacy for Human Resources to request such information as long as the information is kept confidential.



# The role of state and local law in implementing a return-to-work strategy

## Example: New Jersey Executive Orders 242 and 243

- Effective June 4, in workplaces that are not open to the public, employers will no longer have to require employees who provide proof that they are fully vaccinated to wear face masks or social distance.
- If an employer cannot determine an employee's vaccination status or if an employee is not fully vaccinated, employers must continue to require those employees to wear masks and practice social distancing in indoor spaces.
- Employers are permitted to continue requiring vaccinated employee to wear masks and social distance.
- Eases many restrictions on businesses open to the public.

## Example: New Jersey Executive Orders 242 and 243

- Different rules apply to customers, visitors, and other authorized individuals. Employers may allow them “to enter the worksite without requiring use of a mask or adherence to social distancing, regardless of their vaccination status.”
- However, employers may establish a policy that requires these individuals who enter the worksite to wear a mask and/or social distance.
- Employers must still comply with enhanced cleaning protocols and other requirements of Executive Order 239 and Executive Order 192, including daily health checks

## Example: New Jersey Executive Orders 242 and 243

- Effective as of May 28, individuals are no longer required to wear face masks or social distance in indoor public spaces. The social distancing requirements for these locations, and any applicable standards issued by the Commissioner of the Department of Health, remain in full effect.
- Employers and entities overseeing indoor public spaces are permitted to impose stricter requirements regarding mask-wearing. They cannot, however, penalize or retaliate against any individuals who elect to wear a mask.



## Example: Georgia



- Effective as of May 28, 2021 Georgia has dropped all mention of COVID-19 mitigation requirements and recommendations for businesses in the Governor's executive orders, except as to long-term care facilities.

## Example: California

- Social Distancing is no longer required!
- Respirators must be provided upon request for voluntary use if:
  - Employee is not vaccinated AND working indoors; or
  - In a vehicle with more than 1 person
- Employees no longer need to wear a mask unless:
  - Employee is not vaccinated AND working in doors; or
  - In a vehicle with more than 1 other person
- Employers shall not retaliate against an employee that chooses to wear a mask

# California - Notice and reporting obligations

- Employers must report to their local health departments COVID 19 cases and outbreaks
  - 3 or more cases in an exposed group of employees is an outbreak
  - Major outbreak = 20 or more cases
- Within in one business day of when an employer knew or should've known of a COVID 19 case must provide notice to:
  - All employees;
  - Independent contractors; and
  - Employers;
  - That were on the worksite during the high-risk of exposure period.



## California - Testing



- An employer must still offer free testing during paid time to:
  - Symptomatic unvaccinated employees, regardless of whether or not there has been an outbreak
  - Unvaccinated employees after an exposure
  - Vaccinated employees after an exposure, but only if they develop symptoms. If no symptoms develop the employee does not have to quarantine!
  - Unvaccinated employees during an outbreak
  - All employees during a major outbreak

# California - Vaccinations

- Employers can require Vaccinations!
  - Still have to provide reasonable accommodations to employees that cannot get vaccinated for a valid reason.
- The EEOC has approved “limited” incentive programs
  - Employers can offer incentives to employees to get vaccinated
  - Large incentives could trigger ADA liability (such as a \$500 cash incentive)
- For an employee to be considered fully vaccinated, employers must:
  - keep a record of an employee’s vaccine card; or
  - keep a record of an employee’s “self-attestation” that they are vaccinated.
  - If the employee refuses to state their vaccination status, they must be treated as an unvaccinated employee; and
  - 14 days have passed since the second dose of a two dose vaccine, or the first dose of a single dose Vaccine

## California - Other remaining obligations

- Must maintain effective written COVID 19 prevention program and provide training to educate your employees on the program
- Quarantine and exclusion pay requirements!
  - effective until September 30, 2021
  - An employee who was excluded from work because of a workplace COVID-19 exposure should receive exclusion pay if: 1) the employee was not assigned to telework during that time; and 2) the employee did not receive Disability Payments or Workers' Compensation Temporary Disability Payments during the exclusion period.

# Vaccine Passports: Differing Opinions Amidst the States

- More governors and state legislatures are taking action to ban vaccination, and thus passports, from being a requirement to access certain goods and services.
- Other states, follow the federal government's deference to the private rights of businesses to require vaccine passports for entry.
- Still other states will require vaccine passports or proof of negative COVID-19 status for entry to certain activities.
  - New York
  - Hawaii

# Vaccine Passports: Differing Opinions Amidst the States

- Citing privacy and freedom concerns, the following states have instituted band on digital vaccine passports in *BOTH* the Public and Private Sectors:
  - Alabama
  - Arizona - excludes health care institutions
  - Florida
  - Iowa
  - Montana
  - North Dakota
  - South Carolina
  - South Dakota
  - Texas – applies to organizations receiving public funds
- Other conservative state governors have voiced opposition and have banned in the government sector.



# Employer liability for workplace COVID-19 exposure



# IMMUNITY LAWS



- At last count, 30 states have signed or waiting to be signed immunity laws granting immunity for damages brought against businesses by persons who assert claims relating to COVID-19.
- On March 29, 2021, Florida's Governor DeSantis signed such a law. The law became effective immediately.
- The law protects businesses that make a good faith effort to comply with governmental health standards or guidance.

## In-depth Example: Georgia

- Businesses in Georgia now have another year of protection from civil lawsuits arising out of alleged COVID-19 exposure, transmission, infection, or potential exposure. The Georgia COVID-19 Pandemic Business Safety Act (GCPBSA), which has been in effect since last summer, provides some protection to businesses and individuals from COVID-19 exposure claims (and other types of claims).
- Law now applies to claims that accrue before July 14, 2022.
- For businesses or individuals who do not sell tickets for entry onto their property, the liability protections under the GCPBSA can be triggered by posting signage in at least one-inch Arial font placed apart from any other text at all points of entry to their property.

## Example: Georgia

- Sign must state the following:

### ***Warning***

*Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.*

## Missouri (pending)

- 537.1005. 1. Notwithstanding any other provision of law to the contrary, and except as otherwise provided in this section, no individual or entity engaged in businesses, services, activities, or accommodations shall be liable in any COVID-19 exposure action unless the plaintiff can prove by clear and convincing evidence that:
  - (1) The individual or entity engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19; and
  - (2) The actual exposure to COVID-19 caused the personal injury of the plaintiff..
- Rebuttable presumption of an assumption of risk by a plaintiff in a COVID-19 exposure action when an individual or entity posts or maintains signs or provides written notice with special language

# **Reconfiguring the office layout to promote safety, requiring masks, sanitation and other practical issues**

# What will the office look like?

- Open floor plans?
- Virtual on-boarding/training?
- Five days a week in the office?
- Remote work agreements setting forth expectations, like hours, availability and reimbursements for home office equipment will be important. Setting clear expectations will affect morale and productivity.



# Final Questions



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# Thank You

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