

OSHA

UP TO DATE®

 nsc.org

VOL. 50, NO. 3 | MARCH 2021

OSHA updates COVID-19 guidelines as Biden administration focuses on worker safety

OSHA has issued updated COVID-19 guidance for workplaces – the “first step” by the Biden administration and new OSHA leadership to address the pandemic.

“The guidance issued today is the first step in the process, but it’s certainly not the last step in that process,” Jim Frederick, OSHA’s acting administrator and the agency’s deputy assistant secretary, said Jan. 29 during a Department of Labor virtual news conference.

The updated guidance, titled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace,” stems from an Executive Order signed by President Joe Biden on Jan. 21. In addition to issuing the updated guidance, the order directs OSHA to consider an emergency temporary standard related to COVID-19. If an ETS is considered necessary, the agency was instructed at press time to issue one by March 15.

A little more than one week into his new job, Frederick said he wasn’t ready to commit to a clearer time frame or outline what a potential ETS would include.

“We do not have an outline of what an ETS might look like, should we consider to go there,” Frederick said. “That



is something we’re deliberating about and we’ll be working on.”

In the updated guidance, OSHA replaces suggestive language with stronger language, such as employers “should implement” prevention programs to reduce the transmission of the coronavirus. Unlike a regulation, however, the guidelines provide no legal obligations for employers.

Steps employers should take to reduce transmission of COVID-19 among workers include adopting policies that

encourage potentially infected workers to remain home without punishment for their absences. Workers also should have protection from retaliation for raising COVID-19-related concerns, and employers should communicate policies and procedures in every language spoken by their workforce.

Additionally, the guidance calls for hazard assessments and the identification of control measures that will limit the spread of the coronavirus.

– article continues on p. 4

Biden signs Executive Order directing OSHA, MSHA to consider emergency temporary standards

President Joe Biden on Jan. 21 signed an Executive Order directing OSHA and the Mine Safety and Health Administration to consider emergency temporary standards related to COVID-19, among other steps.

If those emergency temporary standards are considered necessary, the Executive Order, titled “Protecting Worker Health and Safety,” calls on the agencies to issue them by March 15.

The EO also directed OSHA to publish updated or revised COVID-19 guidance within two weeks and review its enforcement efforts, according to the

Biden administration’s National Strategy for COVID-19 Response and Pandemic Preparedness. The agency published the updated guidance Jan. 29.

Additionally, the EO paves the way for the launch of a National Emphasis Program on COVID-19 “to focus enforcement resources on workplace violations that put the largest number of workers at serious risk.”

“Further, the Small Business Administration will work with the Department of Labor to disseminate updated OSHA guidance on worker safety and support businesses in implementing the updated

guidance,” the strategic document states. This will include a multilingual outreach campaign.

The EO also directs OSHA to coordinate with State Plan states to protect workers not covered by the federal agencies and to consult with state/local governments and/or public sector unions on how best to protect workers in the public sector.

Finally, the order calls on the departments of Agriculture, Transportation, and Health and Human Services, among others, to protect workers not covered under OSHA or MSHA.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to osha.gov/dcsp/alliances/index.html.

Associated General Contractors of Oklahoma Building Chapter



Date of alliance: Dec. 18, 2020

Each organization is committed to providing members of the Associated General Contractors of Oklahoma Building Chapter and others with information, guidance, and access to training resources that will help them protect workers and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970. Through the alliance, the organizations will continue to address fall, electrocution, excavation, struck-by and caught-in/between hazards.

Through the alliance, the organizations will use injury, illness and hazard exposure data, when appropriate, to help identify areas of emphasis for alliance awareness, outreach and communication activities. The alliance will also explore and implement selected options, including but not

limited to member surveys, to evaluate the alliance and measure the impact on improving workplace safety and health.

Raising awareness: Outreach and communication

- To share information on OSHA’s national/regional/local emphasis programs, regulatory agenda and consultation services, as well as opportunities to participate in the rulemaking process.
- To share information on occupational safety and health laws and standards, including the rights and responsibilities of workers and employers.
- To convene or participate in forums, roundtable discussions or stakeholder meetings on construction safety to help forge innovative solutions in the workplace or to provide input on safety and health issues.

Training and education:

- To develop effective training and education programs to promote understanding of workers’ rights, including the use of the OSHA complaint process, and the responsibilities of employers.
- To deliver or arrange for the delivery of courses on fall protection; trenching and excavation safety, including competent person training; electrical safety; silica dust; confined space, including competent person training; hot and cold weather exposure safety; crushing hazards; fire extinguishers/fire safety; CPR (instructor); and hazard communication (supervisor/administrator training).

Excerpted from osha.gov/alliances/region/all/region6/renewal_agreement_20201218.

In Other News...

Biden administration revokes Trump-era policies on DOL guidance

The Biden administration has rescinded Department of Labor policies and requirements for guidance documents, according to final rule published in the Jan. 27 *Federal Register*.

Since Sept. 28, DOL had required “significant” guidance to undergo notice-and-comment procedures – much like potential regulations – in accordance with a final rule published in the Aug. 28 *Federal Register*. “Significant” guidance documents are those with an expected economic impact of \$100 million or more. The latest final rule contends that the previous rule deprived DOL and its agencies of “necessary flexibility” and restricted the department’s “ability to provide timely guidance on which the public can confidently rely.”

The new rule stems from an Executive Order signed Jan. 20 by President Joe Biden. It rescinded EO 13891, signed by former President Donald Trump.

Biden taps Jim Frederick for acting head of OSHA

President Joe Biden has appointed Jim Frederick OSHA’s acting administrator and the agency’s deputy assistant secretary. Most recently, Frederick worked as a senior consultant with ORC HSE Strategies, a National Safety Council workplace safety group. He previously served as assistant director and principal investigator for the United Steelworkers’ health, safety and environment department from 1994 to 2019.

OSHA’s former highest-ranking official, Principal Deputy Assistant Secretary Loren Sweatt, stepped down before Biden’s inauguration Jan. 20, according to the agency’s website. Sweatt served as acting assistant labor secretary from August 2017 to March 2019.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Virtual reality safety training

Standards: 1910.120, 1910.269 and 1910.1030(g)(2)(vii)(N)

Date of response: Aug. 10, 2020

Thank you for your letter to the Occupational Safety and Health Administration regarding the adequacy of meeting OSHA’s training requirements when a training is provided using online tools. Additionally, in an electronic correspondence to OSHA, you requested OSHA to address the growing field of virtual reality safety and health training.

Question: *Can an employer meet OSHA’s training requirements when the training is provided online only? Additionally, would the use of VR as the sole medium for providing safety and health training be acceptable to OSHA?*

Response: Many OSHA standards require that employees receive training so that they can perform work in a safe and healthful manner. OSHA’s publication, OSHA 2254, found at [osha.gov/Publications/osha2254.pdf](https://www.osha.gov/Publications/osha2254.pdf), provides a list of OSHA training requirements. This publication contains a variety of specific requirements related to employee training as of 2015. Some of the standards listed in OSHA 2254 require “adequate” or “effective” training or instruction. Whether online or VR training methods provide “adequate” or “effective” training may only be determined on a case-by-case basis. Employers need to examine the standards applicable to their workplaces and determine whether the training tools (such as online or VR) they are using advance their employees’ overall comprehension and understanding of workplace hazards.

Effective safety and health training should include hands-on instruction and exercises, which provide employees the opportunity to become familiar with protective measures, such as personal protective equipment, and safe workplace practices. For example, the purpose of hands-on training in the donning and doffing of PPE is twofold: first, to ensure that workers have an opportunity to learn by experience, and second, to assess whether workers have learned to use the protective gear competently.

In some instances, effective training must also provide an opportunity for interactive questions and answers. For example, 29 CFR 1910.1030(g)(2)(vii)(N) (the Bloodborne Pathogens standard) requires “[a]n opportunity for interactive questions and answers with the person conducting the training session.” When training is provided online or in a VR environment, this requirement may not be met if such an opportunity is not made available.

Additionally, some OSHA standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard, 29 CFR 1910.120, and electric power generation, transmission, and distribution, 29 CFR 1910.269, require site and/or job-specific training. Sole reliance on online or VR-based training programs may not provide such site and/or job-specific training. Therefore, the adequacy and effectiveness of safety and health training provided by an employer to his or her employees may only be determined based on the facts of each particular case.

Patrick J. Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2020-08-10](https://www.osha.gov/laws-regs/standardinterpretations/2020-08-10).

OSHA

UP TO DATE®

In This Issue

- OSHA updates COVID-19 guidelines as Biden administration focuses on worker safety
- Biden signs Executive Order directing OSHA, MSHA to consider emergency temporary standards
- OSHA Alliances: Associated General Contractors of Oklahoma Building Chapter
- OSHA Standard Interpretations

VOL. 50, NO. 3 | MARCH 2021

Board of Directors

Andrew O. Johnson, Chairman
Elaine Beitler, Vice Chairman

Delegates

Elaine Beitler, Chair of Delegates

President and CEO

Lorraine M. Martin

Chief Operating Officer and Chief Strategy Officer

Nicholas Smith

Chief Marketing Officer

Tom Bell

Publisher

Deborah Meyer, deborah.meyer@nsc.org

Editor

Melissa J. Ruminski, melissa.ruminski@nsc.org

Managing Editor

Jennifer Yario, jennifer.yario@nsc.org

Copy Editor

Paul Wleklinski, paul.wleklinski@nsc.org

Associate Editors

Barry Bottino, barry.bottino@nsc.org
Kevin Druley, kevin.druley@nsc.org
Alan Ferguson, alan.ferguson@nsc.org

Senior Graphic Designer

Michael Sharkey

Online Content Manager

Amy Bellinger

Production Coordinator

Joy Tan-Pipilas

Subscriptions/Circulation

subscriptions@nsc.org

OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States. © 2021 by the National Safety Council.

Information contained in this publication is compiled from sources believed to be reliable. The National Safety Council makes no guarantee as to, and assumes no responsibility for, the correctness, sufficiency or completeness of such information. Additional measures may be required under particular circumstances. Information in this publication may not be reproduced without permission from the publisher.

For single and bulk subscription prices, as well as mailing inquiries and address changes, contact NSC Customer Service at (800) 621-7619.

— continued from p. 1

The guidance includes information about physical distancing and face coverings, among other recommended measures, as well as the roles of employers and employees in COVID-19 responses. This includes considerations for workers who are at higher risk of severe illness, including older employees, “through supportive policies and practices.”

Other sections address the installation of barriers when physical distancing of 6 feet or more isn't feasible, ventilation, personal protective equipment, good hygiene practices, and routine cleaning and disinfection.

“More than 400,000 Americans have died from COVID-19 and millions of people are out of work as a result of this crisis,” M. Patricia Smith, senior counselor to the labor secretary, said in a press release. “Employers and

workers can help our nation fight and overcome this deadly pandemic by committing themselves to making their workplaces as safe as possible. 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.”

Another step in the process is “streamlining” the COVID-19-related citation process, OSHA senior advisor Ann Rosenthal said during the news conference.

She said the previous administration had “so many levels of review for COVID-related citations that, generally, they were issued on the final day of the six-month statute of limitations.”

The goals of the streamlined citation process, Rosenthal added, are timely abatement of hazards and informing workers.



“The guidance issued today is the first step in the process, but it's certainly not the last step in that process.”

Jim Frederick
Acting administrator, OSHA