

Vaccines & Variants: A COVID-19 Update for Employers

Our Presentation
Will Begin Soon!

Vaccines & Variants: A COVID-19 Update for Employers

Presented by:
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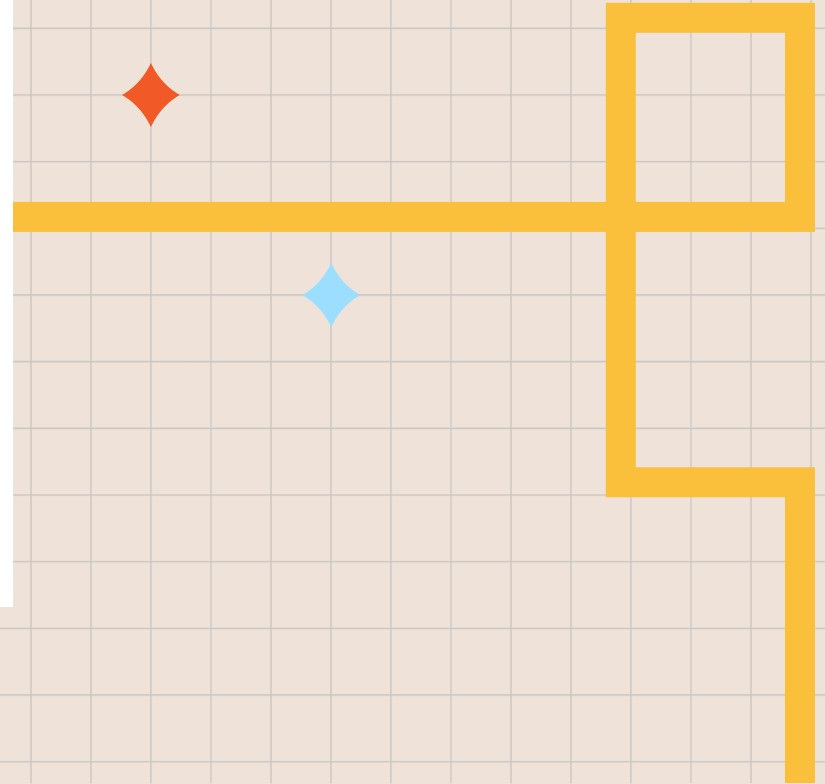
Agenda



The Current State of:

- Variants, Vaccines, and Immunity
- The On-Hold Federal Mandates
- Voluntary Employer-Imposed Mandates
- CDC and OSHA Guidance
- Ongoing COVID Safety Precautions

Variants, Vaccines, and Immunity



Delta: The Basics

- The Delta variant is twice as contagious as original COVID
- Fewer people have a cough or loss of smell, more people have headaches, sore throats, and runny noses (looks more like the common cold)
- It appears that Delta may cause more severe illness in unvaccinated people than the original
- Delta appears more likely to cause breakthrough infections for the fully vaccinated
- When a vaccinated person catches Delta, their viral load is as high as an unvaccinated person for a time (unlike original COVID), but it goes down faster than for the unvaccinated, so they will be infectious for shorter periods of time

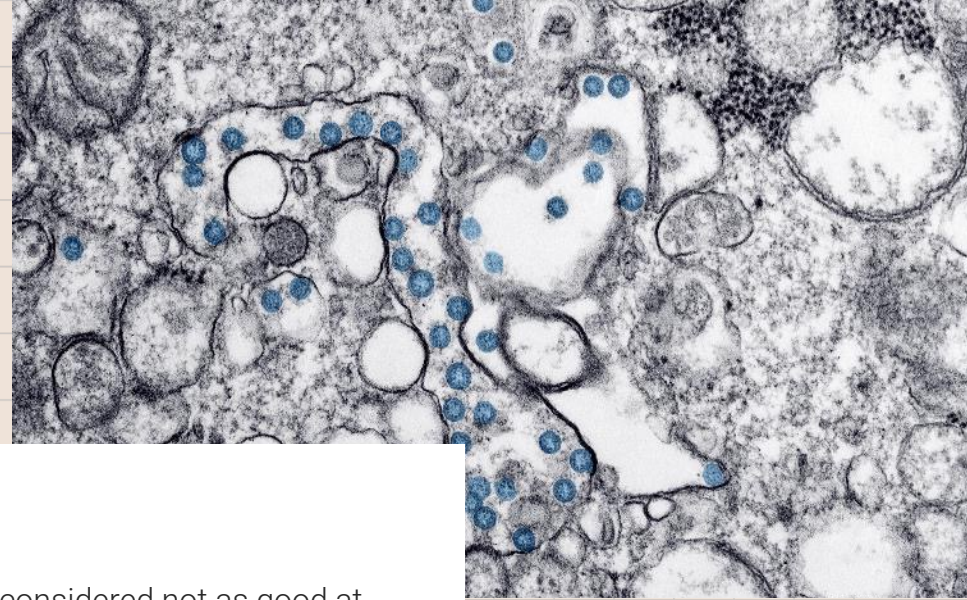
Omicron: The Basics

- Testing is in progress now and we should know more by next week
- Appears to be even more infectious than Delta
- May cause less severe disease than Delta
- Two doses of our current vaccines have very limited effectiveness against Omicron, but a booster dose (or two doses + previous infection) significantly increases antibodies. This is according to four separate studies from researchers in South Africa, Germany, Sweden, and the U.S..
- Pfizer says they could have an Omicron booster by March 2022
- Moderna says they could have one ready for testing in 60 to 90 days and they are looking at making a booster that would target likely mutations in multiple variants



Kids and Boosters

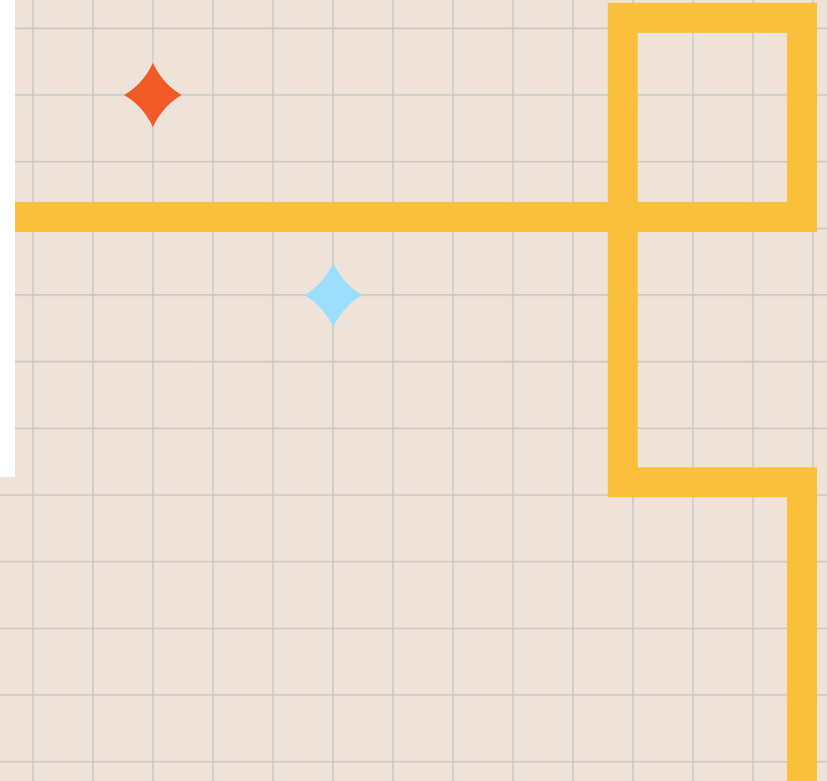
- Kids 5 and older are now able to get vaccinated
- Children under 5 may be eligible in early 2022
- Boosters are approved and recommended for everyone now
- Current boosters are the same vaccines we already have
- There may (will) be strain-specific boosters in the near future



Natural Immunity

- Quite effective against non-Omicron, but generally considered not as good at vaccination
- Natural immunity plus at least one shot provides very good protection against non-Omicron strains
- The CDC and OSHA do not currently recognize natural immunity as an alternative to being vaccinated
- If an employer wanted to accept natural immunity in lieu of vaccination, they could, but should require *proof*
- Many people *assume* they had COVID at some point during the last 21 months, but may not have; acting as if they have immunity based on their word would be risky

~~The New OSHA Mandate~~ (and Federal Contractor EO and CMS)



What does it require?

Employers must have either:

- A mandatory vaccination policy, *or*
- A policy that requires vaccination OR weekly testing + mask wearing



Who does this apply to?

- All employers with 100+ employees anywhere in the country
- Count *all* employees – temporary, part-time, seasonal, on-call, etc.
- In states with OSHA-approved State Plans, employers will be covered by state occupational safety and health requirements



What are the deadlines?

- The rule took effect immediately on November 5th
- Almost all aspects were to be implemented by December 6th
- Testing wouldn't need to begin for unvaccinated workers until January 4th





Are any employees exempt?

- Employees who are entirely alone in the workplace at all times
- Employees who work from home
- Employees who work *exclusively outdoors*

Do I have to pay for anything?

- Four hours of paid time per shot to be “fully vaccinated.” No time for boosters. You *cannot* take this out of any of their leave banks.
- Paid time to recover from vaccine side effects. You can take this out of their sick leave or PTO bank, but *not* vacation.
- Federal or state law might require that you pay for time an employee spends getting tested.
- The ETS does not require employers to pay for the cost of tests, but state law might.



What should I do if I want to be prepared for the ETS to come back to life?



- Get familiar with the requirements
- Create written policies to implement the ETS
- Provide each employee with information about:
 - The requirements of the ETS and workplace policies and procedures established to implement the ETS
 - The CDC document “Key Things to Know About COVID-19 Vaccines”
 - Protections against retaliation and discrimination
 - Laws that provide for criminal penalties for knowingly supplying false statements or documentation



Will the ETS survive?

Probably not.

It could survive in small parts (still unlikely).

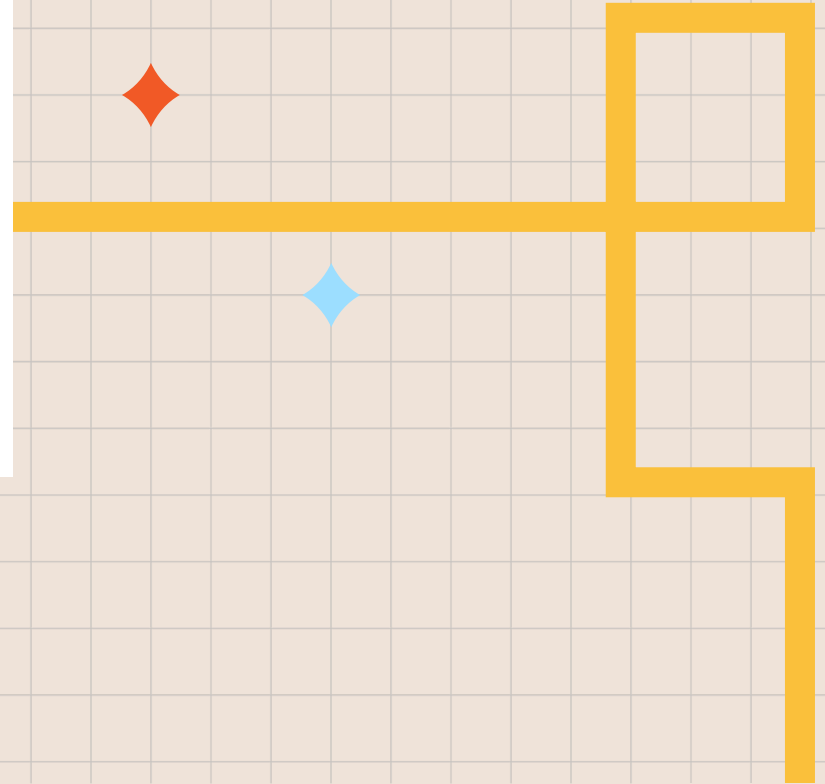
But it was simultaneously introduced as a proposed final rule, which means it's going through the standard (though expedited) notice and comment period. A non-emergency rule stands a better chance of survival.



Federal Contractor EO and CMS Rule Also on Hold

- Interim Final Rule for Medicare and Medicaid providers and suppliers has been enjoined – CMS will not enforce.
- Federal Contractor EO was halted in TN, KY, and OH last week, and as of Tuesday is blocked nationwide (and looks unlikely to be revived).

Optional Mandates





The Legal Stuff: One Year In

Montana has made different treatment of the vaccinated and unvaccinated illegal in employment.

Some states (KS, FL, UT, ND, TN, AL, IA, TX) have passed laws that limit mandates. They generally look like this:

Employers must grant requests to be excused from a vaccine mandate if the employee or applicant provides a statement that getting the vaccine would do any of the following:

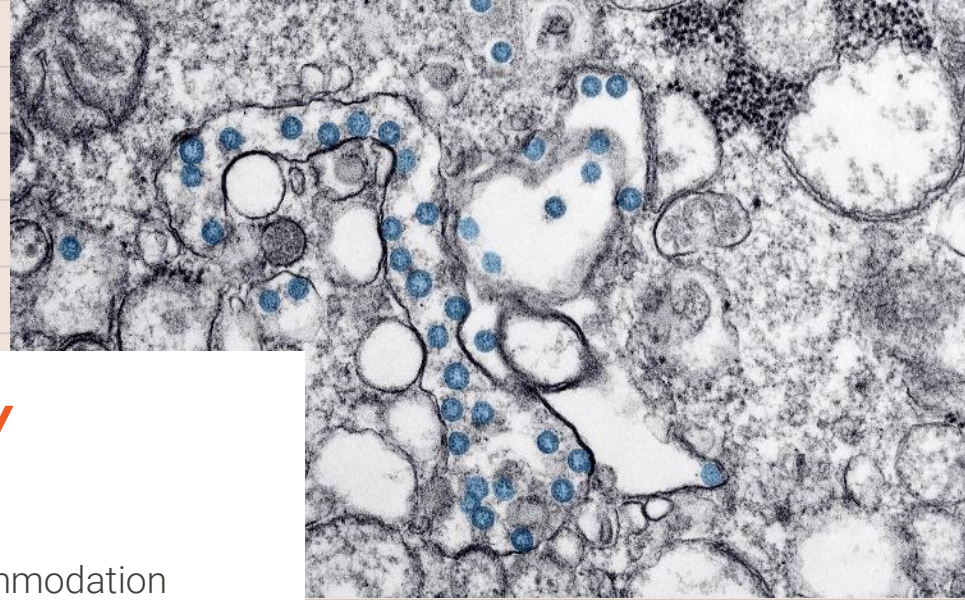
- *Be injurious to their health and wellbeing*
- *Conflict with their sincerely held religious belief, practice, or observance*
- *Conflict with their sincerely held personal belief*

We have **not** seen successful litigation from employees (or students or customers) who are opposed to safety precautions or vaccine mandates; the courts are upholding longstanding law that allows mandatory vaccination.

Requests for Disability Accommodations

Treat these just like any other disability accommodation request.

- You can ask for proof (be consistent)
- Engage in the interactive process
- The standard for undue burden is "significant difficulty or expense"



Requests for Religious Accommodations (in states *without* laws limiting mandates)

- Search "EEOC COVID FAQ" and read the new Section L at the bottom.
- Employees must have a sincerely held *religious* belief. SCOTUS has recognized a difference between religious beliefs and personal beliefs that are “essentially political, sociological, or philosophical.”
- Don't argue with an employee about the sincerity of their request or beliefs unless you have a *good faith and objective basis* for distrusting their claim.
- You can—and should—ask them to fill out a request form. That can allow for inquiry into their reasoning. And when asked to explain in writing, for the record, and sign their name to it, some employees may decide against it if they're fibbing.

Requests for Religious Accommodations, cont.

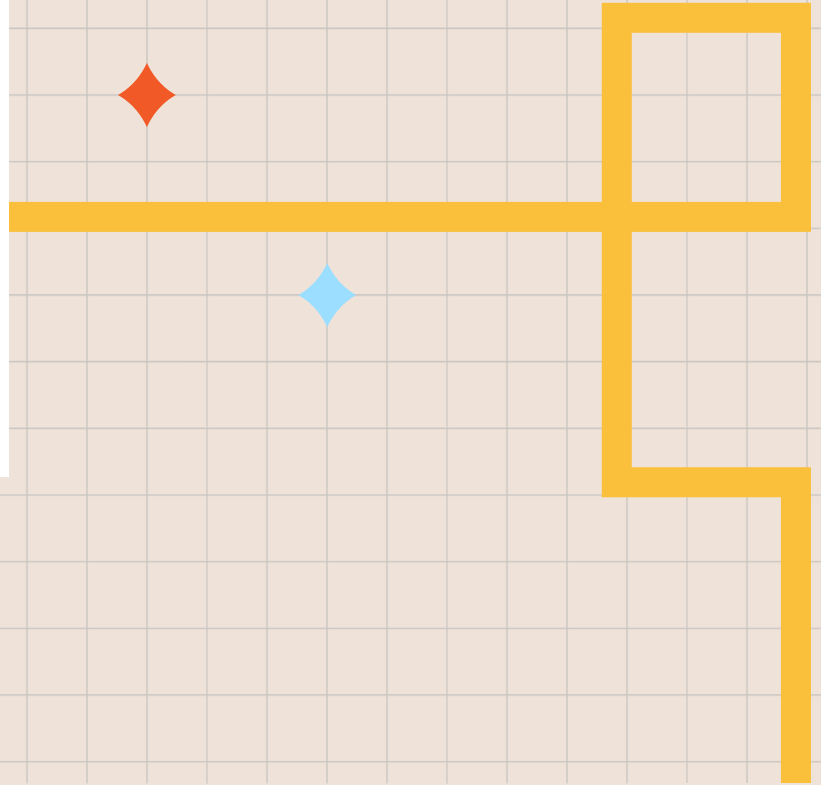
- "Accommodations" will likely mean extra safety precautions, e.g., testing, (N95) masks, social distancing, or an unpaid leave of absence; make this known.
- Engage in the interactive process if necessary.
- The standard for "undue burden" with respect to religious accommodations is "more than de minimis cost"
- From the EEOC: *An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.*



If You Don't Want to Mandate, Incentives May Still Work

- \$100 would convince up to 35% of people to get the shot
- Being able to take off masks and skip the social distancing may be even more compelling (though not currently recommended)
- Let employees get the shot during their workday and offer paid time off to recover

CDC and OSHA Guidelines

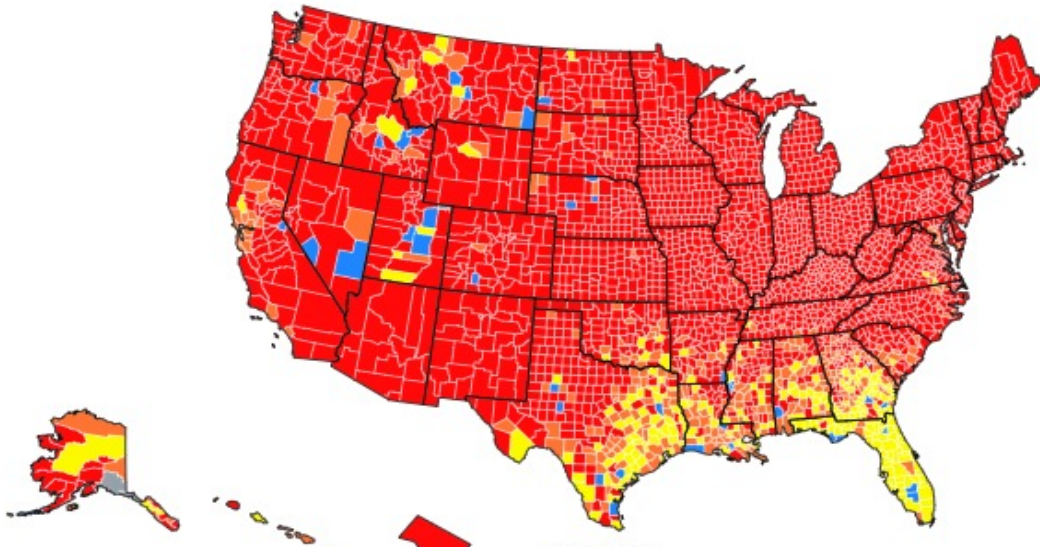




Current CDC Masking Guidelines

- Even if fully vaccinated, to maximize protection from Delta and prevent spreading it to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#).
- If you are not fully vaccinated, wear a mask in *all* indoor public places.
- In areas with high numbers of COVID-19 cases, consider wearing a mask in crowded outdoor settings.

Areas of Substantial and High Transmission



Community Transmission in US by County

	Total	Percent
High	2560	79.45%
Substantial	322	9.99%
Moderate	282	8.75%
Low	52	1.61%

How is community transmission calculated?



OSHA General Duty Clause

Each employer shall furnish to each of 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

Current not-stayed OSHA Guidance

for employers not subject to the Healthcare ETS or EO for Fed Contractors

1. **Help employees get vaccinated.** Employers should grant paid time off for employees to get vaccinated and recover from any side effects. Consider working with local public health authorities to provide vaccinations in the workplace for unvaccinated workers. Consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing – in addition to mask wearing and physical distancing – if they remain unvaccinated.
2. Instruct 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**.

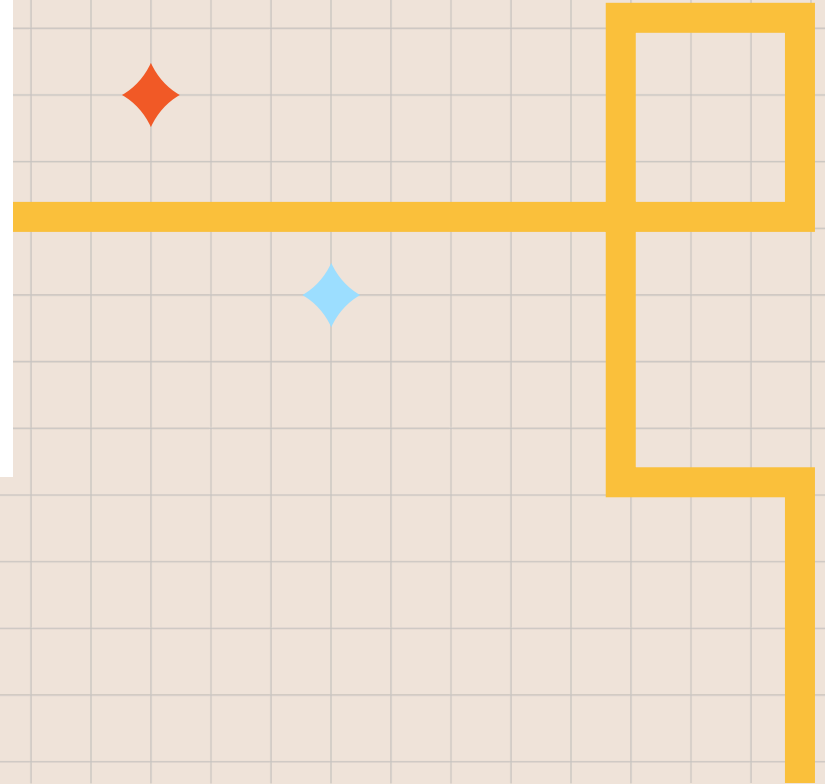
Current OSHA Guidance cont.

3. Implement **physical distancing** in all communal work areas for **unvaccinated and otherwise at-risk workers**. Limit the number of unvaccinated or otherwise at-risk workers in one place at any given time.
4. Provide workers with **face coverings or surgical masks**, as appropriate, unless their work task requires a respirator or other PPE. If PPE is required, pay for that too.
5. **Educate and train workers** and managers on your COVID-19 policies and procedures using accessible formats and in languages they understand.
6. Suggest or **require that unvaccinated customers, visitors, or guests wear face coverings** in public-facing workplaces such as retail establishments, and that all customers, visitors, or guests wear face coverings in public, indoor settings in areas of substantial or high transmission.

Current OSHA Guidance cont.

7. Maintain **ventilation** systems.
8. Perform routine **cleaning** and disinfection.
9. **Record and report workplace-related COVID-19 infections and deaths.** (*You don't need to report vaccination side effects right now – OSHA doesn't want to discourage employers from getting involved*)
10. Implement **protections from retaliation** and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.
11. Follow other applicable mandatory **OSHA standards**.

Ongoing Safety Measures





Follow CDC, OSHA, State, and Local Guidance

- Encourage or require vaccination
- Require masks (for now)
- Send sick people home
- Offer paid sick leave
- Accommodate as required



Don't Overestimate the Power of Testing

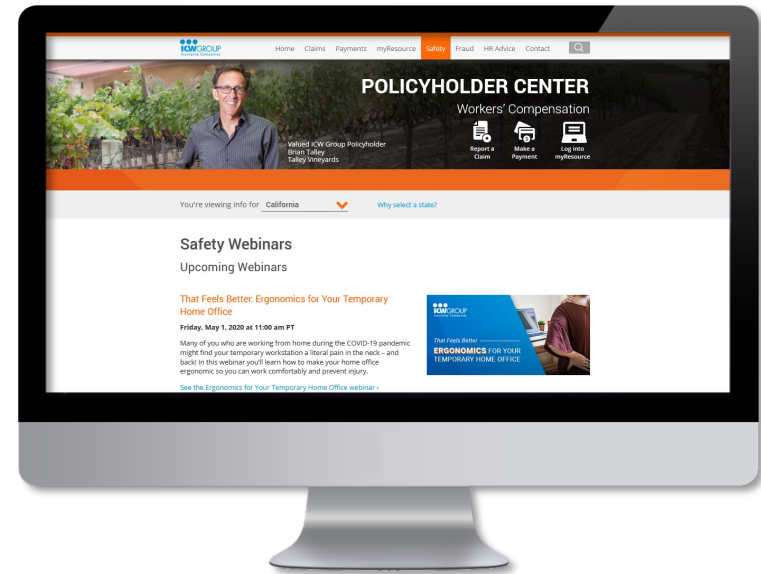
- Remember that testing only gives you information about an *exact point in time*.
- An employee who tests negative Monday at 8 am could test positive by 4pm and be infectious in the workplace all week.
- If you are genuinely concerned about the safety of the workplace, testing should be used *in addition to*, not as a substitute for, other safety measures.
- Testing is rarely free or fast.

ICW Group Policyholder Website!

Find webinars & resources!

- Safety and Risk Management area
- Safety Webinars
- **Vaccines & Variants:
A Covid-19 Update**

icwgroup.com/safety

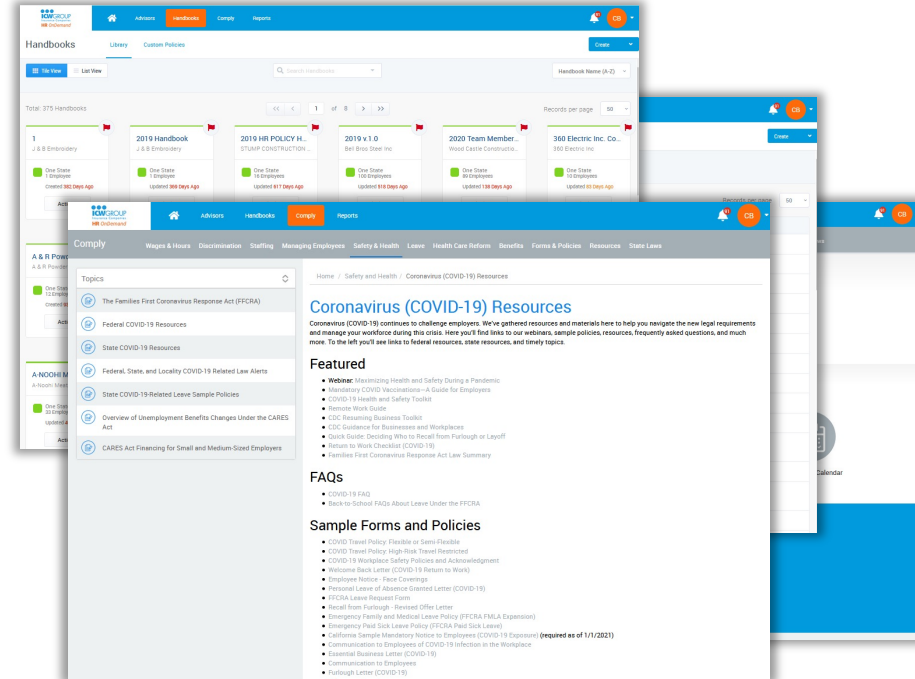


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ICW Group Policyholder Website!



Check out Policyholder Center COVID-19 resources

- Disease Preparedness & Response Plan (IDPRP)
- Communications, on-demand webinars, FAQ's & more
- Direct link to HR OnDemand COVID-19 resources

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HR OnDemand Coronavirus resources

As our policyholder, you have free access to our HR OnDemand services. See this helpful resource for employee guides, communications and law alerts. Newly added items include: Guidance from the CDC, OSHA, EEOC and HHS, best practices on how to handle an infectious outbreak, and a sample communication to send to employees.

On-demand webinar: Compliance Matters: Layoffs, Furloughs, and Recalls

Watch and share this informative COVID-19 webinar, offered through HR OnDemand

Login to HR OnDemand to get all Coronavirus resources

To get the full benefit of HR OnDemand's Coronavirus resources, login to find Families First Coronavirus Response Act (FFCRA), Sample Emergency Paid Sick Leave Policy (FFCRA Paid Sick Leave), Telecommuting Agreement, Work From Home Agreement, Acknowledgement of Receipt for Company-issued Property, and more!

Helpful FAQs on workers' comp and Coronavirus

Workplace safety FAQs

These FAQs have been compiled by our risk management team to help keep your workplace safe.

- ✓ If my employee contracts Coronavirus at work is it OSHA recordable?
- ✓ Is our Respiratory Protection plan designed to help prevent our employees from getting sick?
- ✓ Should we buy N95 filtered face pieces (masks) for everyone in our workplace?
- ✓ What can a healthcare organization do to lessen potential exposure by employees and patients?
- ✓ Can we protect ourselves from off-the-clock injuries when employees are working remotely?

Workers' compensation claims FAQs

Our dedicated team of highly trained claim specialists is working hard to provide you with accurate information specific to your claims needs as it relates to COVID-19. These FAQs have been compiled to help you gain a handle on workplace-related illnesses and associated claims.*

- ✓ If my employee may have been exposed to COVID-19 on the job, what should I do?
- ✓ Is disease from coronavirus covered by workers' compensation?
- ✓ Should I report a COVID-19 claim to my workers' compensation carrier?
- ✓ Should we take preventative measures to minimize the risk of exposure for my employees?
- ✓ If our employee with work-related COVID-19 illness infects their family, does work comp cover family member's medical bills?
- ✓ What do we do if an employee wants to make a workers' compensation claim for COVID-19?

AUDIENCE QUESTIONS



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THANK YOU!

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