

START WITH SAFETY

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EEOC CHIMES IN ON COVID UPDATES AS PUBLIC HEALTH EMERGENCY ENDS

The COVID federal public health emergency ended on May 11. In response, the U.S. Equal Employment Opportunity Commission (EEOC) updated its COVID technical assistance, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws."

Employers, however, should not assume they no longer have COVID-related accommodations to consider. The EEOC reminds employers of their rights and obligations in the following:

- **Employee illness:** If an employee calls in sick, employers may ask whether the employee has COVID or common symptoms of COVID as identified by the Centers for Disease Control and Prevention (CDC).
- **Doctor's note:** The Americans with Disabilities Act (ADA) allows employers to require a note from a qualified medical professional explaining that it is safe for the employee to return (i.e., no risk of transmission) and that the employee is able to perform the job duties.
- **Recordkeeping requirements:** The ADA requires that employers store all employee (and applicant) medical information separately from the employee's personnel file, thus limiting access to this confidential information. Employers may store all medical information related to COVID in existing medical files. This includes an employee's statement that the employee has the disease or suspects so, or employer notes or other documentation from questioning an employee about symptoms. Similarly, employers must treat information about an employee having Long COVID confidential.
- **Reasonable accommodations:** Some common examples of possible reasonable accommodations for Long COVID include a quiet workspace, use of noise-canceling devices, and uninterrupted work time to address brain fog; alternative lighting and reducing glare to address headaches; rest breaks to address joint pain or shortness of breath; a flexible schedule or remote work to address fatigue; and removal of "marginal functions" that involve physical exertion to address shortness of breath.
- **Workplace options:** Employers may ask employees if any reasonable accommodations might be needed before returning to the workplace.
- **Accommodation changes:** Employers may not automatically end an employee's reasonable accommodations that were provided due to pandemic-related circumstances. Employers may, however, evaluate accommodations that were granted during the



public health emergency. Then, in consultation with the employee, employers may assess whether the employee continues to need a reasonable accommodation based on individualized circumstances.

- **Medical documentation:** When an employee requests a reasonable accommodation related to COVID or Long COVID under the ADA, employers may request supporting medical documentation before granting the request, as long as the condition is not obvious or already known.
- **Harassment prevention:** Employers should continue to watch for COVID-related harassment of applicants or employees with a disability-related need to continue wearing a face mask or take other COVID precautions at work.

Key to remember: Just because the public health emergency is over doesn't mean that employers won't continue to run into COVID-related issues.

UNDERSTAND HOW PORTABLE FIRE EXTINGUISHERS ARE APPLIED WITH RESPECT TO OSHA'S EMERGENCY ACTION & FIRE PREVENTION PLANS

Employers are generally required by 29 CFR 1910 to provide portable fire extinguishing equipment for use in fighting incipient stage fires in the workplace. 29 CFR 1910.157, however, provides alternatives for employers who do not want some or all of their employees to fight incipient-stage fires in the workplace. Employers who opt for the evacuation of all or most employees to a safe area do not have to comply with certain requirements of 1910.157, depending on the option chosen. These options are:

1. The employer evacuates all employees to safety when a fire occurs [1910.157(b)(1)]: Employers who select this option are relieved

LIVE EVENT

2023
SAFETY
ACADEMY

Watch your inbox
for the next
quarterly event!

ONLINE EVENT

2023
VIRTUAL
TRAINING

"When OSHA
Comes Knocking"
on June 20 @ 9am
click here to join the
training!

SURVEY: TEXAS EMPLOYER PARTICIPATION IN WORKERS' COMPENSATION SYSTEM UP TO 75%

A survey from the Texas Department of Insurance, Division of Workers' Compensation's Research and Evaluation Group found that employer subscription in workers' comp increased to 75% in 2022, up from 72% in 2018. Texas allows employers to decide whether or not to offer workers' compensation to their employees.

The survey, Employer Participation in the Texas Workers' Compensation System, found that the share of employees that work for subscribers increased to 83%, the highest in 12 years. Subscription rates among small employers decreased while rates remained stable for large employers. The Public Policy Research Institute at Texas A&M University conducted 1,619 interviews with year-round private-sector Texas employers.

Mining/utilities/construction had the highest participation rate, with 84% of employers in those industries reporting subscription to the workers' comp system. 81% of wholesale trade/retail trade/transportation employers participated, up from 67% in 2018. Health care/educational services had the smallest share of employer participation, with only 63% reporting subscription to the system.

The most frequent reason employers gave for not purchasing coverage was the employer had too few employees (26%), followed by law does not require employers to have workers' compensation insurance (23%), and employer had few on-the-job injuries (23%).

The Texas Department of Insurance releases a workers' compensation employer participation survey every other year.

from compliance with 1910.157 unless a specific standard in part 1910 requires that portable fire extinguishers be provided. If the employer selects this option, compliance with 1910.38 and 1910.39 is required through 1910.157(b)(1).

2. The employer evacuates all employees except those designated to use portable fire extinguishers [1910.157(b)(2)]: Employers who select this option need not comply with the distribution requirements of 1910.157(d). This option allows for the employer to distribute extinguishers in a manner such that they are available to the employees designated to fight incipient stage fires. If the employer selects this option, compliance with 1910.38 is required through 1910.157(b)(2).
3. The employer keeps portable fire extinguishers in the workplace but does not want employees fighting fires and therefore evacuates the employees to safety [1910.157(a)]: OSHA recognizes that portable fire extinguishers may be required in the workplace by other organizations (e.g., insurance companies, local fire departments, etc.). Portable fire extinguishers that are not intended for employee use may still pose a hazard if they are not properly maintained. Where this option is selected and the employer meets 1910.38 and 1910.39, then only the maintenance, inspection, and testing requirements in paragraphs (e) and (f) of 1910.157 apply.

Employers who do not select any of these options but instead provide portable fire extinguishers for use by any employee to use in fighting incipient stage fires must comply with 1910.157 in its entirety. Employees who provide portable fire extinguishers for employee use must provide an educational program to familiarize all employees with the general principles of fire extinguisher use [1910.157(g)(1) and (g)(2)]. Employees who

are expected to use portable fire extinguishers must be provided with "hands-on" training in the use of fire extinguishing equipment [1910.157(g)(3)]. If the employer chooses to comply with all of 1910.157, there is no requirement under 1910.157 to comply with 1910.38 or 1910.39.

What does OSHA mean by a monthly "visual" inspection of fire extinguishers?

While OSHA's Portable Fire Extinguisher regulation, 1910.157(e)(2), does not explain exactly what "visual inspection" should consist of, a June 27, 1997, letter of interpretation (which has since been removed) offered some guidance.

In that interpretation, OSHA said that the intent of the monthly inspection is to provide assurance that the extinguisher will operate effectively and safely. In addition to being in its designated place (readily accessible and immediately available), and being pressurized, the extinguisher can be observed for other possible defects, such as corrosion, mechanical damage, the presence of welding, soldering, brazing, or possible tampering.

OSHA says we are to use the following checklist as a guide to monthly visual inspections.

1. Is each extinguisher in its designated place, clearly visible, and not blocked by equipment, coats, or other objects that could interfere with access during an emergency?
2. Is the nameplate with operating instructions legible and facing outward?
3. Is the pressure gauge showing that the extinguisher is fully charged (the needle should be in the green zone)?
4. Is the pin and tamper seal intact?
5. Is the extinguisher in good condition and showing no signs of physical damage, corrosion, or leakage?
6. Have all dry powder extinguishers been gently rocked top to bottom to make sure the powder is not packing?



PowerXL Stuffed Wafflizer Makers
Hazard: Burn

Positec Blue Ridge Utility Knives
Hazard: Laceration

Target Threshold Candles
Hazard: Laceration, Burn

Kell Personal Chiller Mini Fridges
Hazard: Burn

Peloton Exercise Bikes
Hazard: Fall, Injury

ODL Severe Weather Doorglass Inserts
Hazard: Injury

American Woodmark Continental Cabinets & Hampton Bay Kitchen Wall Cabinets
Hazard: Impact

Advanced EV Advent Golf Carts
Hazard: Fall, Injury

Polaris RZR Pro XP & Turbo R OVs
Hazard: Fire

Shimano PRO Vibe Alloy Stems
Hazard: Crash, Injury

Cole & Mason Pepper Mills
Hazard: Laceration