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OSHA Issues Emergency Temporary Standard for Healthcare Settings, Updated COVID-19 Guidance Covering All Other Industries

For the first time in 38 years, the U.S. Occupational Safety and Health Administration (OSHA) has issued an Emergency Temporary Standard (ETS). An ETS is effective immediately upon publication in the Federal Register and remains in effect until superseded by a permanent standard. Covered employers must comply with most provisions within 14 days, and with the remaining provisions (including physical barriers, ventilation, and training) within 30 days. By issuing an ETS, OSHA has determined that workers are in grave danger due to a new hazard and that an ETS is needed to protect them.

On June 10, 2021, OSHA issued the [ETS](#) as Subpart U of 29 CFR part 1910 (29 CFR §§ 1910.502 *et seq.*). The ETS applies to workers in healthcare settings where people with COVID-19 are reasonably expected to be present, and addresses the hazard of employee exposure to SARS-CoV-2, the virus that causes COVID-19. OSHA has created a [website](#) dedicated to the ETS, which provides a [summary](#) and 98 [FAQs](#), among other resources.

The same day, OSHA also provided [updated guidance](#) covering employers and workers not subject to the COVID-19 Healthcare ETS.

COVID-19 Healthcare ETS

1. Covered Settings

The ETS [applies](#) to settings where any employee provides healthcare services or healthcare support services, including hospitals, nursing homes, assisted living facilities, emergency response situations, home healthcare, and ambulatory care facilities where suspected or confirmed COVID-19 patients are treated. The ETS also covers healthcare settings embedded in non-healthcare settings, but only applies to the embedded healthcare setting and not to the remainder of the physical location.

2. Exempt Settings

The ETS [does not apply](#) to: (a) first aid provided by an employee who is not a licensed healthcare provider; (b) pharmacists dispensing prescriptions in retail settings; (c) non-hospital ambulatory care settings where all non-employees are screened and people with suspected or confirmed COVID-19 are not permitted entry; (d) well-defined hospital ambulatory care settings where all employees are fully vaccinated, all non-employees are screened, and people with suspected or confirmed COVID-19 are not permitted entry; (e) home healthcare settings where all employees are fully vaccinated, all non-employees are screened, and people with suspected or confirmed COVID-19 are not present; (f) healthcare support services not performed in a healthcare setting; or (g) telehealth services performed outside of a setting where direct patient care occurs.

Additionally, the ETS exempts fully vaccinated workers from masking, distancing, and barrier requirements when in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present.

For more guidance on whether the COVID-19 Healthcare ETS applies to your workplace or setting, see OSHA's [flow chart](#).

3. Main Requirements

COVID-19 Plan. The ETS requires covered employers to develop and implement a written¹ COVID-19 Plan for each workplace. Under the Plan, the employer must also conduct workplace-specific hazard assessments, and must seek the input and involvement of non-managerial employees and their representatives in the hazard assessments and development and implementation of the Plan. The employer must monitor each workplace to ensure ongoing effectiveness of the Plan, including any needed updates, and include policies and procedures to minimize the risk of transmission of COVID-19 to employees. Finally, employers must retain all versions of their Plan to comply with recordkeeping requirements of the ETS.

Safety Coordinator. As part of the COVID-19 Plan for each workplace, the employer must designate a workplace safety coordinator. The coordinator must be knowledgeable in infection control principles and practices, and be vested with the authority to implement, monitor, and ensure compliance with the Plan. Any written Plan must document the identity of the safety coordinator.

Personal protective equipment (PPE). Covered employers must provide and ensure employees wear facemasks (over mouth and nose) when indoors and when occupying a vehicle with other people for work purposes. Further, covered employers must provide and ensure employees use respirators and other PPE when exposed to COVID-19 patients, including during aerosol-generating procedures, and must allow voluntary use of respirators instead of facemasks.

Distancing, barriers, and cleaning. Covered employers must ensure each employee is separated from all other people by at least 6 feet when indoors, install cleanable or disposable solid barriers at each fixed work location in non-patient care areas where each employee is not separated from other people by at least 6 feet, and must follow CDC guidelines for cleaning practices in patient care areas. In all other areas, the employer must clean high-touch surfaces at least once per day and provide hand sanitizer or readily accessible handwashing facilities.

Standard-based and transmission-based precautions. Covered employers must develop and implement policies and procedures to adhere to CDC guidelines for standard-based and transmission-based precautions.

Aerosol-generating procedures on COVID-19 patients. For aerosol-generating procedures on COVID-19 patients, covered employers must perform the procedures in an airborne infection isolation room (if available), limit employees present to only those essential to the procedure, and clean and disinfect surfaces and equipment following the procedure.

Ventilation. Covered employers must ensure that employer-owned or controlled HVAC systems are used in accordance with manufacturer's instructions and the design specifications of the system. The ETS requires the use of air filters with a MERV rating of 13 or higher if the HVAC system accommodates it, that airborne infection isolation rooms are maintained and operated in accordance with their design and construction criteria, and that intake ports are regularly cleaned and properly maintained.

Mini respiratory protection program. Covered employers must provide training on inspecting and using respirators like N-95s. They also must educate employees on the limitations and capabilities of the respirator, including how to perform a user seal check and how to recognize medical signs and symptoms that may limit the effective use of respirators.

¹ Need not be in writing if 10 or fewer employees.

Patient screening and management. Covered employers must limit and monitor points of entry to settings where direct patient care is provided, screen all non-employees entering the setting for symptoms of COVID-19, and implement patient management strategies in accordance with CDC guidelines.

Employee screening and management. The ETS requires the employer to screen employees before each workday and shift and provide employer-required testing at no cost to employees. The ETS also provides requirements for employee notification of COVID-19 positive cases, removal of COVID-19 positive employees from the workplace, and a process for returning removed employees to the workplace consistent with CDC guidelines.

Vaccination. Covered employers must provide reasonable time and paid leave for vaccinations and vaccine side effects. If an employer makes available to its employees 4 hours of paid leave for each dose of the vaccine, as well as up to 16 additional hours of leave for any side effects of the dose(s) (or 8 hours per dose), the employer would be in compliance with this requirement.

Training. The ETS requires regular employee training on disease transmission, COVID-19 exposure situations, and the employer's COVID-19 policies and procedures.

Recordkeeping/reporting. Covered employers² must establish a COVID-19 log of all employee instances of COVID-19, irrespective of whether transmission occurred in the workplace. They also must comply with requirements addressing making records available to employees, which includes producing Plan versions and logs within one day of request by an employee or OSHA. Covered employers must report to OSHA each work-related COVID-19 fatality within 8 hours and each work-related COVID-19 in-patient hospitalization within 24 hours.

Anti-retaliation. Covered employers must inform employees of their right to the protections afforded by the ETS and must refrain from discharging or discriminating against employees for compliance.

Non-Healthcare Updated COVID-19 Guidance

OSHA posted Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace on January 29, 2021, which OSHA updated on June 10, 2021. In general, the updates address protections in workplaces where vaccinated and unvaccinated workers are present, encourage COVID-19 vaccination, and incorporate current CDC guidance.

OSHA acknowledges that most employers no longer need to take steps to protect fully vaccinated workers who are not otherwise at risk from COVID-19 exposure. However, employers must still implement measures and precautions to limit exposure where unvaccinated employees may be present. The updated guidance focuses on protecting unvaccinated or otherwise at-risk workers in their workplaces.

For more information on these issues, please reach out to a member of Cline Williams' [Labor and Employment Law Section](#) and [Health Care Section](#).

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² If more than 10 employees.