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OSHA issues COVID-19 emergency temporary standard for healthcare and updated guidance for all industries

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Authors

Nancy Vary, JD

Abe Dubin, JD

On June 10, the Occupational Safety and Health Administration released a COVID-19 Emergency Temporary Standard (ETS) for healthcare employers. The ETS will be effective immediately upon publication in the Federal Register. The agency also updated guidance for non-healthcare employers on mitigating and preventing the workplace spread of COVID-19.

Background

On January 21, President Biden ordered the Occupational Safety and Health Administration (OSHA) to issue revised guidance to employers on workplace safety during the pandemic and to issue any necessary COVID-19 ETS by March 15. Issuance was delayed as national vaccination rates increased, COVID-19 infections decreased and related guidance from the Centers for Disease Control and Prevention (CDC) continued to evolve.

On June 10, OSHA released an ETS aimed at protecting workers in healthcare settings where suspected or confirmed COVID-19 patients are treated (e.g., hospitals, nursing homes, assisted living facilities, and certain ambulatory care facilities). The agency also updated guidance for employers and workers not covered by the ETS on mitigating and preventing the workplace spread of COVID-19. Both the new standard and the general industry guidance are aligned with CDC guidance.

Emergency temporary standard

The ETS will be effective immediately upon publication in the Federal Register and will remain in effect until replaced by a permanent OSHA standard. Covered employers will be required to comply with most provisions within 14 days and remaining provisions involving physical barriers, ventilation, and training within 30 days. OSHA has provided a flow chart entitled “Is your workplace covered by

the COVID-19 Healthcare ETS” to help employers determine whether the new standard applies to them along with a [fact sheet](#) and [FAQs](#).

ETS requirements

The ETS establishes certain employer requirements for covered settings where employees provide healthcare or healthcare support services, including:

- Conducting workplace hazard assessments; developing and implementing COVID-19 mitigation plans (in writing if the employer has more than 10 employees)
- Monitoring and limiting entry access where direct patient care is provided; screening patients, clients, other visitors and nonemployees entering the setting
- Following standard and transmission-based precautions in accordance with CDC guidelines; limiting exposure to aerosol-generating procedures on individuals with suspected or confirmed COVID-19 infections
- Providing and ensuring use of required personal protective equipment (PPE)
- Requiring physical distancing of at least six feet indoors and, if that is not possible, installing physical barriers in fixed work locations outside of direct patient care areas — notably, the ETS allows fully vaccinated workers to relax masking and distancing requirements in well-defined areas where there is no reasonable expectation that they will come in contact with anyone suspected or confirmed to have COVID-19
- Cleaning and disinfection of surfaces and equipment in accordance with CDC guidelines
- Monitoring and ensuring proper ventilation systems
- Conducting employee health screening prior to each workday/shift and undertaking appropriate medical management for suspected or confirmed COVID cases
- Providing employees with paid time off to get vaccinated and to recover from any side effects
- Training workers on COVID-19 policies, procedures and workplace transmission
- Informing employees of their rights to protections under the ETS and the prohibition on discharge, discrimination or retaliation against them for exercising those rights

In addition, the ETS includes procedures for reporting COVID-19 fatalities and hospitalizations to OSHA, maintaining a COVID-19 log, and notifying employees of workplace exposures.

Buck comment. OSHA-approved state plans with their own COVID-19 rules like those in California, Michigan, Oregon and Virginia will be required to show that their standards are at least as effective as the new ETS or amend them accordingly.

Updated guidance

Along with the ETS for healthcare employers, OSHA updated existing guidance for other employers, including those hard hit by the virus such as meatpacking and manufacturing. The guidance recognizes that, with the exception of workplace settings covered by the ETS and mask requirements for public transportation, most employers no longer need to take measures to protect workers against COVID-19 workplace exposure where all employees are fully vaccinated.

The guidance focuses on protections for unvaccinated and otherwise at-risk workers (e.g., immunocompromised employees), encourages COVID-19 vaccination, and adds links to guidance with the most up-to-date content. It outlines steps employers should take to protect unvaccinated or otherwise at-risk workers in their workplaces (or well-defined portions of workplaces) and encourages employers to engage with workers and their representatives to determine how to implement them, including:

1. Granting employees paid time off to get vaccinated
2. Instructing workers who are infected, unvaccinated workers who have been exposed to the virus, and all workers with COVID-19 symptoms to stay home to reduce the risk of transmission
3. Implementing physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas
4. Providing unvaccinated and otherwise at-risk workers with face coverings or surgical masks (or respirators or other PPE in accordance with mandatory OSHA standards)
5. Educating and training workers on your COVID-19 policies and procedures using accessible formats and in language they understand
6. Suggesting that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces
7. Maintaining ventilation systems
8. Performing routine cleaning and disinfection
9. Recording and reporting COVID-19 infections and deaths to OSHA and local health authorities as required
10. Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related workplace hazards
11. Following other applicable OSHA standards

In closing

The ETS will take effect upon publication in the Federal Register and will require healthcare employers to comply with most provisions within 14 days and with the remaining provisions within 30 days. Healthcare employers should begin to take steps now that will be necessary to comply. Employers not covered by the ETS should carefully review and, as appropriate, factor the updated guidance into their current COVID-19 policies and procedures.

COVID-19 Compliance check-in

Buck's latest version of the [COVID-19 Compliance check-in](#) is updated to reflect the retirement, health, labor and employment issues facing employers now. Review the checklist to help your team manage priorities and determine next steps.

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