

OSHA Issues COVID-19 Emergency Temporary Standard for Healthcare Employers

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On June 10, 2021, OSHA issued its COVID-19 Emergency Temporary Standard ([ETS](#)) tailored to workplaces where employees provide healthcare services or healthcare support services, with certain exceptions. To determine whether a workplace is covered by the standard, employers may use this [flowchart](#) published by OSHA in conjunction with the ETS. Importantly, in well-defined areas in the workplace where there is no reasonable expectation that any person with suspected or confirmed COVID-19 would be present, fully vaccinated employees are exempted from facemasks, physical distancing, and solid barriers requirements under the ETS.

The ETS will become effective upon publication in the Federal Register, which is yet to occur as of the date of this alert. Employers are required to comply with the ETS within 14 days of the effective date but will have 30 days from the effective date to comply with the physical barriers, ventilation, and training requirements under the ETS.

Employer obligations under the ETS include:

COVID-19 Plan: Employers with more than 10 employees must develop and implement a written COVID-19 plan, which among other things, should require:

- Designating at least one COVID-19 safety coordinator knowledgeable in infection control principles and practices in the workplace to implement and monitor the plan, and with the authority to ensure compliance with all aspects of the COVID-19 plan;
- Conducting a workplace-specific hazard assessment to identify potential COVID-19 hazards in the workplace;
- Seeking input and involvement of non-managerial employees and their representatives in the hazard assessment and in the development and implementation of the COVID-19 plan, which will include addressing the identified hazards and including in the plan policies and procedures for minimizing the risk of viral transmission in the workplace; and
- Ensuring ongoing effectiveness of the COVID-19 plan and updating it as needed.

Additionally, to be eligible for exemption to safety controls in well-defined work areas based on employees' fully vaccinated status, the COVID-19 plan must include policies and procedures for determining employees' vaccination status.

Patient Screening and Management: In settings where direct patient care is provided, employers must limit and monitor points of entry, and screen and triage all individuals entering the setting, and implement other applicable patient management strategies.

Standard and Transmission-Based Precautions: Employers must develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC guidelines.

Personal Protective Equipment: Employers must provide and ensure that employees wear face masks when indoors or when occupying a vehicle with others for work purposes. Each employee must change his/her face mask at least once per day, whenever they are soiled or damaged, or more frequently as necessary. The ETS provides for exceptions to the facemask requirement, including when an employee is alone in a room, when eating or drinking in the workplace if six feet apart from others or separated by a physical barrier, when wearing respiratory protection, when employees cannot wear facemasks due to medical condition/disability or due to religious beliefs, and when the use of a facemask may result in serious injury or death.

Employees exposed to persons with suspected or confirmed COVID-19 must be provided a respirator and other PPE. Such PPE should also be provided to each employee in accordance with Standard and Transmission-Based Precautions in healthcare settings in accordance with CDC guidelines. When the use of a respirator is not required (such as when employees choose to wear their own respirator instead of a facemask), employers must comply with the ETS' Mini Respiratory Protection Program requirements contained in the ETS.

Aerosol-generating Procedures: For aerosol-generating procedures on a person with suspected or confirmed COVID-19, only essential employees should be present during the procedure, the procedure must be performed in an airborne infection isolation room if available, and surfaces and equipment in the room or area where the procedure was performed must be cleaned and disinfected.

Physical Distancing: Each employee must be separated from all other persons by at least 6 feet when indoors unless infeasible (e.g., during hands-on medical care). This provision is inapplicable to momentary exposure while people are in movement (e.g., passing in hallways or aisles).

Physical Barriers: At fixed work locations outside of direct patient care areas such as check-in desks, triage, and pharmacy or payment windows where employees are unable to maintain physical distancing, employers must install solid barriers unless infeasible. Barriers are not required in direct patient care areas or resident rooms.

Cleaning and Disinfection: CDC guidelines for cleaning and disinfection of surfaces and equipment must be followed in patient care areas, resident rooms, and for medical devices and equipment, and in areas where the employer has knowledge that a COVID-19 positive person was present in the last 24 hours. In all other areas, high-touch surfaces and equipment must be cleaned at least daily. Employers must provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible hand washing facilities.

Ventilation: All employers should consider measures to improve ventilation in the workplace in accordance with CDC's guidance. Employers that own or control the workplace building with an existing HVAC system, must ensure that the system is used optimally and in accordance with the manufacturer's instructions, and all air filters should be rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the existing system.

Health Screening and Medical Management:

- Employees must be screened or asked to self-monitor before each workday and shift. If a COVID-19 test is required for screening, it must be provided at no cost to the employees.
- Employees must be required to promptly notify the employer when the employee: (1) is COVID-19 positive; or (2) has been told by a licensed healthcare provider that the employee may have COVID-19;

or (3) is experiencing recent loss of taste/smell with no other explanation; or (4) is experiencing a fever of 100.4F or greater with new unexplained cough with shortness of breath.

- Employers with knowledge of COVID-19 exposure in the workplace must within 24 hours confidentially notify employees who were not wearing a respirator and other required PPE and were in either in close contact with the COVID-19 case or worked in a well-defined area (e.g., a particular floor) where the COVID-19 case was present during the potential transmission period. Employers may also need to notify other employers in the workplace. Notification provisions do not apply to areas where services are normally provided to suspected or confirmed COVID-19 patients.
- Once notified, employers must follow certain removal procedures, and must follow the return-to-work criteria in accordance with CDC guidelines. Employers are not required to remove exposed employees if they are asymptomatic and have either been fully vaccinated or had COVID-19 and recovered within the past 3 months.
- Employers with 10 or more employees must provide certain medical removal protection benefits to employees who are required to isolate or quarantine.

Vaccination: Employers must provide reasonable time and paid leave to each employee for vaccination and to recover from any side effects experienced following vaccination.

Training: Employees must be effectively trained on topics including COVID-19 transmission, tasks and situations in the workplace that could result in COVID-19 infection, and COVID-19-related workplace policies and procedures.

Anti-Retaliation: Employees must be informed of their rights to the protections under the ETS. Employees must not be discharged or discriminated against for exercising their rights under the ETS or engaging in any conduct required by the standard.

Recordkeeping: Employers with more than 10 employees must establish and maintain a COVID-19 log recording each known instance in which an employee is COVID-19 positive, regardless of whether the instance is connected to exposure to COVID-19 at work. The ETS provides for specific information that must be contained in the log, requires that COVID-19 instances in the log must be recorded within 24 hours of the employer learning that the employee is COVID-19 positive and that the log must be maintained as though it is a confidential medical record. The ETS provides for disclosure of the log under specific situations. It is important to note that employers must continue to record all work-related confirmed cases of COVID-19 on their OSHA Forms 300, 300A, and 301 as required under 29 CFR § 1904.

Reporting: Employers must report work-related COVID-19 fatalities within 8 hours of notice and work-related COVID-19 in-patient hospitalizations within 24 hours of notice, in accordance with 29 CFR §1904.39.

While it is likely that most employers in the healthcare sector covered under the ETS may already be following many of the obligations imposed by the ETS, employers should revisit their written COVID-19 plan and workplace policies to ensure full compliance with the ETS. Among other things, employers should note the limitations on relaxing the mask and physical distancing requirements for the fully vaccinated employees, the notification requirements for potentially exposed employees, paid time off requirements so as not to discourage employees from getting vaccinated, and the recordkeeping and reporting obligations imposed by the ETS.

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