

PUBLICATION

The Wait is Over: OSHA Issues COVID-19 Emergency Temporary Standard for Healthcare Workers and Updated Guidance for All Other Industries

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On June 10, 2021, OSHA announced the long-awaited issuance of a COVID-19 Emergency Temporary Standard (ETS), applicable only to the health care industry. OSHA has proposed only nine emergency rules in the past 40 years. Although a specific date has not been set, this standard becomes effective when it is published in the Federal Register. OSHA also issued updated guidance for employers that are not covered by the ETS.

COVID-19 Emergency Temporary Standard

OSHA specifically **provides** that the ETS applies to "all settings where any employee provides healthcare services or healthcare support services."

OSHA also defines certain exceptions, stating that the ETS does not apply to the following:

1. Provision of first aid by an employee who is not a licensed health care provider;
2. Dispensing of prescriptions by pharmacists in retail settings;
3. Non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter;
4. Well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter;
5. Home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;
6. Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or
7. Telehealth services performed outside of a setting where direct patient care occurs.

For employers who are covered by the ETS, the following elements are required:

8. Development and implementation of a COVID-19 Plan which must be written if the employer has more than ten employees;
9. Designate at least one workplace COVID-19 safety coordinator;
10. Conduct a workplace-specific hazard assessment related to COVID-19;
11. Implement patient screening and management where direct patient care is provided;
12. Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC's "Guidelines for Isolation Precautions";
13. Provide appropriate PPE depending on the circumstances of care;
14. Implement specific requirements for any aerosol-generating procedures on a person with suspected or confirmed COVID-19;
15. Ensure physical distancing where possible;
16. Install physical barriers when physical distancing is not possible;
17. Ensure necessary cleaning and disinfection;

18. Evaluate and ensure proper ventilation in buildings owned or controlled by the employer;
19. Implement health screening and medical management of each employee prior to each shift;
20. Provide paid leave for vaccination and any side effects;
21. Train each employee on COVID-19 in general, the ETS and employer/workplace-specific policies and procedures; and
22. Establish a COVID-19 log that lists all employees who are diagnosed with COVID-19 without regard for whether they were exposed in the workplace.

Employers must seek input and involvement of non-managerial employees in the hazard assessment and development of the COVID-19 Plan. All requirements of the standard must be implemented at no cost to the employees.

If a respirator is required (employee is exposed to people with suspected or confirmed COVID-19), the employers must comply with OSHA respiratory protection standard. 29 CFR §1910.134. If respirators are used when not required, the employer must comply with the "Mini Respiratory Protection Program" provided in the ETS at 29 CFR § 1910.504.

With OSHA's focus on anti-retaliation, the ETS specifically requires employers to inform employees that they have a right to the protections provided by the ETS and that employers are prohibited from discharging or discriminating against any employee for exercising those rights.

The required implementation dates for the ETS are dependent on when the standard is published in the Federal Register. OSHA has also recognized that certain requirements of the ETS, as documented in the table below, may take longer to implement than others.

Provisions	Deadline
All provisions except paragraphs (i), (k), (n)	14 days after date of publication in the Federal Register
Physical barriers (i) Ventilation (k) Training (n)	30 days after date of publication in the Federal Register

Updated Guidance for Non-Health Care Employers

OSHA also issued an update to its January 29, 2021 guidance entitled "[Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#)." This guidance is intended to help employers who are not covered by the ETS to identify COVID-19 exposure risks to employees who are not vaccinated or who are otherwise at-risk, and to help them take appropriate steps to prevent exposure and infection. OSHA specifically states "[u]nless otherwise required by federal, state, local, tribal, or territorial laws, rules, and regulations, most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure." The recommendations under the updated guidance are similar, in many respects, to the requirements of the ETS and include:

23. Grant paid time off for employees to get vaccinated;
24. Have workers who have symptoms or who are infected stay home;
25. Implement physical distancing;

26. Provide face coverings for unvaccinated workers or those who are otherwise at-risk;
27. Educate workers on COVID-19 policies and procedures;
28. Suggest that unvaccinated customers, visitors or guests wear face coverings;
29. Maintain ventilation systems;
30. Perform routine cleanings and disinfection;
31. Record and report COVID-19 infections and deaths; and
32. Implement anti-retaliation protections.

For further information, please reach out to Ashley Strittmatter or Sharonda Fancher for assistance. In addition, Baker Donelson will be hosting a webinar on June 29, 2021 at 1:30 p.m. EDT to further discuss the details of the ETS for the health care industry and OSHA's guidance for other industries. [Register here](#).