



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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OSHA COVID-19 Emergency Temporary Standard for Healthcare Industry Takes Effect

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On June 21, 2021, the Occupational Safety and Health Administration (OSHA) adopted its COVID-19 [Healthcare Emergency Temporary Standard \(ETS\)](#). Employers providing health care services will be required to comply with new COVID-19 specific standards it specifies. The ETS applies to all settings where any employee provides “healthcare services” or “healthcare support services.”

Covered Employers

The ETS defines “healthcare services” as:

“services that are provided to individuals by professional healthcare practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. Healthcare services are delivered through various means including: hospitalization, long-term care, ambulatory care, home health and hospice care, emergency medical response, and patient transport. For the purposes of this section, healthcare services include autopsies.”

and “healthcare support services” as:

“services that facilitate the provision of healthcare services. Healthcare support services include patient intake/admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.”

The ETS also includes a list of specific exemptions from these definitions, which include:

1. the provision of first aid by an employee who is not a licensed healthcare provider;
2. the 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 those settings;
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 those settings;
5. home healthcare 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. healthcare support services not performed in a healthcare setting (e.g., off-site laundry, off-site medical billing); or
7. telehealth services performed outside of a setting where direct patient care occurs.

OSHA has provided a [flow chart](#) to help employers determine whether their workplace is covered by the ETS. Regardless of whether an employer is covered by the ETS however, the standards can be instructive when taken in connection with OSHA's recently updated COVID-19 [voluntary guidance](#).

Summary Overview of Key Aspects of the ETS

Beginning on June 21, 2021, employers subject to the ETS will have fourteen (14) days to comply with most of the ETS requirements, and thirty (30) days to comply with the physical barriers, ventilation, and training requirements. Some of the ETS requirements are summarized below.

- **Daily Screening:** With the help of a designated COVID-19 safety coordinator, employers must conduct daily screenings or hazard assessments to determine whether any employees, patients, or other visitors might be COVID-19 positive. In workplaces in which direct patient care is provided, employers must (i) limit and monitor points of entry, (ii) screen and triage patients and other visitors to determine whether they are COVID-19 positive or have symptoms of COVID-19, and (iii) implement other patient-management strategies as established in the CDC's guidelines.
- **Personal Protective Equipment (PPE):** Employers must supply facemasks (e.g., surgical masks) to their employees, and ensure that employees wear them when indoors and when occupying a vehicle with other people for work purposes. Exceptions to this facemask requirement include situations (i) when an employee is alone in a room; (ii) in which an employee is eating and drinking at the workplace at least six feet (6') away from any other person, or separated from other people by a physical barrier; and (iii) when an employee cannot wear a facemask due to a medical necessity, condition, or disability, as defined in the Americans with Disabilities Act, or due to a religious belief.
- **Mini Respiratory Protection Program (MRPP):** If an employer either (i) provides employees with respirators in lieu of facemasks or (ii) permits employees to wear their own respirators in lieu of facemasks, then the MRPP provisions are triggered. When triggered, employers must take certain steps, including providing employees with a notice with instructions on respirator use using ETS-prescribed text, conduct a user seal check, and provide brief training for each applicable employee. Under certain circumstances respirators may be reused, but otherwise must be discarded and replaced.
- **Paid Leave Requirements:** Employers with more than ten (10) employees must provide paid leave to employees removed from the workplace due to conditions consistent with ETS guidelines, with some exceptions. Removed employees must be provided with "benefits to which the employee is normally entitled," and "must also pay the employee the same regular pay the employee would have received had the employee not been absent from work, up to \$1,400 per week, until the employee meets the return to work criteria." If an employer has fewer than 500 employees, the employer is permitted, after an employee has been removed for two weeks, to reduce pay to two-thirds of the regular pay the employee would have received had the employee not been absent from work, up to \$200 per day (which totals \$1,000 per week in most cases).
- **COVID-19 Plan:** All employers, with input from their employees, must create and implement a COVID-19 Plan, which must be in writing if there are more than ten (10) employees. A COVID-19 Plan must establish the policies and procedures, aligned with the ETS and CDC's guidelines, to minimize the transmission risk of COVID-19 to employees. A COVID-19 safety coordinator must be designated and authorized to ensure compliance with these policies and procedures. The plan must include required screenings, or workplace-specific, COVID-19 hazards assessments, to identify whether any employees, patients or visitors might be COVID-19 positive or have symptoms of COVID-19. OSHA has provided a sample [employee COVID-19 health screening questionnaire](#). Fully-vaccinated employees will be exempted from the masking and physical distance requirements only if the COVID-19 plan includes a system to determine employees' vaccination status. Employees who are defined as being fully-vaccinated are ones who have received their final dose of the COVID-19 vaccine more than two weeks prior.
- **Conforming with the CDC's Guidelines:** Employers should follow the relevant CDC guidelines for the implementation of patient-management strategies. Employers also are required to comply with the CDC's Standard and Transmission-Based precautions. The [incorporated CDC guidelines](#) are referenced and can be found in 29 CFR § 1910.509.
- **Aerosol-Generating Procedures on a Person with Suspected or Confirmed COVID-19:** Due to the high risk of exposure posed by the performance of aerosol-generating procedures on persons with suspected or confirmed COVID-19, only employees essential for patient care and procedure support will be allowed to be present during such procedures. If available, the aerosol-generating procedures should be performed in an airborne infection isolation room. After the

completion of these aerosol-generating procedures, the surfaces and equipment must be cleaned and disinfected.

- **Physical Distancing:** People must be at least six feet (6') apart when indoors, unless such physical distancing is not feasible for certain activities, such as hands-on medical care. This distancing requirement does not apply to momentary exposures while in movement (e.g., in hallways or aisles). Fully-vaccinated employees typically will be excused from this requirement.
- **Physical Barriers:** At each fixed work location outside of direct patient care areas where employees are not separated from other people by at least six feet (6'), cleanable or disposable solid barriers must be installed when feasible. The barrier must be sized and located to block face-to-face pathways between individuals, based on where each person would normally stand or sit. The barrier may have a pass-through space at the bottom for objects and merchandise. Physical barriers are not required in direct patient-care areas or resident rooms.
- **Cleaning and Disinfection:** Cleanable or disposable solid barriers must be installed at each fixed work location in non-patient care areas where employees are not separated from other people by at least six feet (6'). Surfaces and equipment in patient-care areas, resident rooms, and other medical devices and equipment will need to be routinely cleaned and disinfected in accordance with CDC guidelines. For all other areas, high-touch surfaces and equipment should be cleaned at least once a day, and alcohol-based hand rub that is at least sixty percent (60%) alcohol should be provided or made readily accessible at handwashing facilities.
- **Ventilation:** Where an employer owns or controls a building with existing heating, ventilation, and air conditioning (HVAC) systems, such systems must be used according to the manufacturer's instructions and design specifications. Air filters must be rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it.
- **Health Screening and Medical Management:** Employees must be screened before each workday and shift, and promptly notify their employers if they are COVID-19 positive, are suspected of having COVID-19, or are experiencing COVID-19 symptoms. In turn, employers will have to notify certain employees within 24 hours when a person who has been in the workplace is found to be COVID-19 positive.
- **Vaccination:** Employers must give their employees reasonable time and paid leave to get vaccinated, and to recover from any vaccine side effects.
- **Training:** Employees must be trained on COVID-19 transmission risks, together with all relevant policies and procedures put in place to reduce these risks. Employers may rely on previously completed training if it meets the relevant requirements under the ETS. However, employers must ensure that each employee receives additional training as needed from a person knowledgeable in the subject matter.
- **Anti-Retaliation:** Employers must inform each employee of their right to the protections required by the ETS, and are prohibited from discharging or discriminating against any employees for exercising their rights to the protections required by the ETS.
- **Recordkeeping:** In addition to existing recordkeeping requirements, all employers with more than ten (10) employees must have adequate recordkeeping in place. All versions of the COVID-19 Plan must be retained. Employers must also maintain a COVID-19 log to record each instance identified by the employer in which an employee is COVID-19 positive, regardless of whether or not it is connected to exposure in the workplace. Upon an employee's request, an employer must provide anonymized copies of any records required to be maintained by the ETS by the end of the next business day.
- **Reporting COVID-19 Fatalities and Hospitalizations to OSHA:** Employers must report to OSHA each work-related COVID-19 fatality within eight (8) hours of their learning about it, and within 24 hours for each work-related COVID-19 in-patient hospitalization.

Employers subject to the ETS will want to act quickly to ensure full compliance with the ETS. Many employers may already have implemented policies that meet ETS requirements, but some of the requirements are new, such as the MRPP, paid leave requirements, and new training, recordkeeping, and reporting obligations. Compliance with the ETS does not relieve employers from complying with applicable state or local government mandates. Compliance with the ETS and other relevant OSHA standards and guidance will require careful attention and continued focus in order to ensure that employees are being provided a safe workplace free from recognized hazards.

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