

OSHA Issues COVID-19 ETS for Healthcare Settings

Update: *The final paragraph of this article was revised June 23, 2021, to update the Federal Register publication date and provide employer compliance information.*

The Occupational Safety and Health Administration (OSHA) issued the [COVID-19 Healthcare Emergency Temporary Standards](#) (ETS) on June 10, 2021.

The ETS applies to workplace settings where professional healthcare practitioners provide healthcare services or healthcare support services, but primarily applies to hospital workplaces. Many other workplace settings where professional healthcare practitioners provide healthcare services or healthcare support services can be exempted from coverage of the ETS if they meet certain criteria, including having all employees fully vaccinated, screening all non-employees for COVID-19 symptoms before entry, and prohibiting entry for persons with suspected or confirmed COVID-19 cases. If there is a healthcare setting embedded within a non-healthcare setting, such as medical clinics within manufacturing facilities, the ETS may apply only to the embedded healthcare setting and not the remainder of the non-healthcare setting.

The ETS contains exceptions for application of the standard for certain healthcare settings meeting certain requirements, including: non-hospital ambulatory care settings, well-defined hospital ambulatory care settings, and home healthcare settings. Importantly, the ETS does not apply to non-hospital ambulatory care settings where: (1) all non-employees are screened before entry, and (2) people with suspected or confirmed COVID-19 are not permitted to enter those settings. Ambulatory care is defined as healthcare services performed on an outpatient basis, without admission to a hospital or other facility. Well-defined hospital ambulatory care settings and home healthcare settings may also be exempt from the ETS requirements if all employees are fully vaccinated, along with screening of all non-employees before entry, and entry refusal for persons with suspected or confirmed COVID-19.

The ETS also exempts well-defined areas of the workplace where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present. For these locations, requirements for personal protective equipment (PPE), physical distancing, and physical barriers do not apply to fully vaccinated employees. To meet this exemption, employers must address policies and procedures to determine employees' vaccination status within the COVID-19 plan.

An employee is "fully vaccinated" two weeks or more following the last dose of a COVID-19 vaccine. OSHA specifically noted in the ETS that they do not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption for well-defined hospital ambulatory care settings and home healthcare settings. Accounting for all employees' vaccination status will be key to showing an ETS scope exemption for well-defined hospital ambulatory care settings, home healthcare settings, and other well-defined areas of the workplace.

Takeaways

Workplace healthcare settings subject to the ETS must comply with several requirements, and may be required to:

- Develop a COVID-19 plan;
- Perform patient screening and management;
- Implement standard and transmission-based precautions based upon CDC guidelines;
- Provide personal PPE, and be subject to a mini respiratory protection program outlined in [29 CFR 1910.504](#);
- Comply with aerosol-generating procedures;
- Implement requirements for physical distancing, physical barriers, cleaning and disinfection, and ventilation;
- Perform health screening and medical management for employees;
- Provide reasonable time and paid leave for vaccinations and vaccine side effects;
- Train employees on COVID-19, including transmission, tasks and situations in the workplace that could result in infection, anti-retaliation provisions, and relevant policies and procedures;
- Report work-related COVID-19 fatalities and in-patient hospitalizations to OSHA, along with additional recordkeeping of a COVID-19 log of all employee instances of COVID-19, and make these records available to employees/representatives; and
- Implement the ETS at no cost to the employees.

The ETS is effective immediately upon publication in the Federal Register, on June 21, 2021. As the regulated community digests the ETS, OSHA has indicated it will use enforcement discretion for employers who are making a good faith effort to comply with the ETS. Employers must comply with most provisions within 14 days (July 6, 2021). Employers are expected to comply with the provisions involving physical barriers, ventilation, and training within 30 days, or by July 21, 2021.

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