

Employment Law Update: OSHA's New Emergency Temporary Standard Requires Certain Healthcare Employers to Follow COVID-19 Regulations

06/15/21

Last week, the [Occupational Safety and Health Administration](#) ("OSHA") issued an [emergency temporary standard \("ETS"\) for healthcare providers](#) designed to protect healthcare and healthcare support service workers from occupational exposure to COVID-19. This legal blog provides an FAQ to explain this temporary standard so employers can navigate the new reforms.

What is OSHA?

Following enactment of the Occupational Safety and Health Act of 1970, Congress established the Occupational Safety and Health Administration as the authority under the United States Department of Labor to ensure safe and healthful workplaces for America's workers by setting and enforcing workplace standards and by providing training, outreach, education and assistance.

Which healthcare employers must follow OSHA's Emergency Temporary Standard?

The temporary standard is an attempt to protect the workers most vulnerable to COVID-19 such as those who work in healthcare settings expected to encounter coronavirus patients and applies to those businesses where employees provide healthcare or healthcare support services, including skilled nursing homes and home healthcare, even when those employees are vaccinated. These businesses include:

- Hospitals
- Nursing homes
- Assisted living facilities
- Emergency responders
- Home health care workers
- Employees in ambulatory care settings where suspected or confirmed coronavirus patients are treated

What are employers required to provide under OSHA's Emergency Temporary Standard?

The ETS will require covered healthcare employers to:

- provide some employees with N95 respirators or other personal protective equipment
- ensure 6 feet of distance between workers
- erect barriers between employees when 6 feet of distance is not feasible
- conduct a hazard assessment and have a written plan to mitigate virus spread
- provide workers with paid time off to get vaccinated and to recover from any side effects
- allow workers with coronavirus or recovering from same to work remotely or otherwise be separated from other workers if possible, or be given paid time off up to \$1400 per week

For most businesses with fewer than 500 employees, tax credits in the American Rescue Plan may be reimbursed through these provisions.

Healthcare Employers Exempt from the ETS

The ETS establishes exemptions for healthcare providers who screen outpatients who may have COVID-19. For example, the ETS does not apply to 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. In addition, when there is no “reasonable expectation” in a healthcare setting that any person will be present who has coronavirus or is suspected of having coronavirus, the ETS exempts fully vaccinated workers from the requirements described in the order. In the above described circumstances, employees are not required to mask, distance or observe barrier requirements.

When does the ETS become effective?

The ETS is effective immediately upon publication in the Federal Register.

When are employers expected to respond?

Employers must comply with most provisions within 14 days and with the remaining provisions within 30 days. OSHA will use its enforcement discretion to avoid citing employers who miss a compliance deadline but are making a good faith effort to comply with the ETS. OSHA will continue to monitor trends in coronavirus transmission. OSHA will modify its ETS when necessary to meet current coronavirus conditions.

TAKEAWAY: Healthcare employers must comply with OSHA’s Emergency Temporary Standard regarding COVID-19.

If you are a healthcare employer and need help navigating OSHA’s Emergency Temporary Standard or any other employment laws, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team.

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