

# OSHA Issues COVID-19 Healthcare Emergency Temporary Standards and Updates Voluntary Guidance for Other Industries

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On June 10, 2021, OSHA announced that it will release an Emergency Temporary Standard (ETS) for the health care industry which will take effect immediately upon publication in the Federal Register. The announcement can be found at <https://www.osha.gov/coronavirus/ets>.

Health Care Employers who are covered will have only 14 days to come into compliance with most of the requirements, and 30 days to come into compliance with the remaining provisions involving physical barriers, ventilation, and training. However, OSHA indicated that it will use its enforcement discretion for employers making a good faith effort to comply. The complete regulation with explanatory preamble runs 916 pages and can be accessed at <https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf>. Below are the highlights.

## **Who is Covered**

This healthcare ETS applies, with some exceptions, to settings where any employee provides healthcare services or healthcare support services. This includes employees in hospitals, nursing homes, and assisted living facilities; emergency responders; home healthcare workers; and employees in ambulatory care facilities where suspected or confirmed COVID-19 patients are treated. **It does not apply to:**

- First aid performed by an employee who is not a licensed healthcare provider;
- Dispensing of prescriptions by pharmacists in retail settings;

- 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;
- 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;
- Home healthcare settings where all employees are fully vaccinated and all nonemployees are screened prior to entry, and people with suspected or confirmed COVID-19 are not present;
- Healthcare support services not performed in a healthcare setting (e.g., off-site laundry, off-site medical billing); or
- Telehealth services performed outside of a setting where direct patient care occurs.

OSHA has provided a flowchart to help employers determine if they are covered by the ETS that can be accessed at <https://www.osha.gov/sites/default/files/publications/OSHA4125.pdf>.

## **What is Required**

The ETS generally requires employers to:

- Conduct a hazard assessment and implement a COVID-19 plan for each workplace. Engage employees in the development of the plan.
- Screen and triage patients, clients, residents, delivery people and other visitors and nonemployees entering the setting for symptoms of COVID-19. Implement patient management strategies.
- Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC guidelines.
- Provide and ensure employees wear facemasks when indoors and when occupying a vehicle with another person for work purposes.
- Provide and ensure employees wear respirators and other personal protective equipment (PPE) for exposure to people with suspected or confirmed COVID-19 and for aerosol-generating procedures (AGPs) on a person with suspected or confirmed COVID-19.
- Provide respirators and other PPE in accordance with Standard and Transmission Based Precautions. For AGPs on persons with suspected or confirmed COVID-19, limit employees present to only those essential, perform procedures in an airborne infection isolation room (AIIR), if available, and clean and disinfect surfaces and equipment.
- Keep employees at least 6 feet apart from all other people when indoors.
- Install cleanable or disposable solid barriers at fixed work spaces in non-patient areas where employees are not separated from others by at least 6 feet.
- Follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC guidelines in patient care areas, resident rooms, and for medical devices and equipment. In all other areas, clean high-touch surfaces and equipment at least once a day. Provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible handwashing facilities.
- Ensure employer-owned or controlled HVAC systems are used according to manufacturer's instructions

and design specifications, and that air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it.

- Screen employees before each work day and shift. Notify certain employees if a person who has been in the workplace is COVID-19 positive.
- Remove employees who have suspected or confirmed COVID-19, certain COVID-19 symptoms, or have had close contact to a person who is COVID-19 positive in the workplace. In some cases, provide pay and benefits to employees removed from the workplace.
- Provide reasonable time and paid leave for vaccinations and vaccine side effects (offset by tax credits for employers with fewer than 500 employees).
- Train employees on workplace policies and procedures regarding COVID-19 in a language they understand.
- Record all employee cases of COVID-19 on a COVID-19 log without regard to occupational exposure. Report work-related COVID-19 fatalities to OSHA within 8 hours of employer knowledge and work-related COVID-19 in-patient hospitalizations within 24 hours.
- The ETS also contains a mini respiratory protection program.

### Updated Voluntary Guidance for Other Industries

On June 10, 2021, OSHA also published an update to *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, a copy of which can be found at <https://www.osha.gov/coronavirus/safework>. The highlights of that updated guidance, **which is voluntary**, but which will help employers comply with the general duty clause obligation to provide a workplace from hazards likely to cause death or serious physical injury, are summarized in the list below:

Employers should engage with workers and their representatives to determine how to implement multi-layered interventions to protect unvaccinated or otherwise at-risk workers and mitigate the spread of COVID-19, including:

1. ***Grant paid time off for employees to get vaccinated.***
2. ***Instruct any workers who are infected, unvaccinated workers who have had close contact with someone who tested positive for SARS-CoV-2, and all workers with COVID-19 symptoms to stay home from work.***
3. ***Implement physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas.***
4. ***Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks, unless their work task requires a respirator or other PPE.***
5. ***Educate and train workers on your COVID-19 policies and procedures using accessible formats and in language they understand.***
6. ***Suggest that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces such as retail establishments.***
7. ***Maintain Ventilation Systems.***
8. ***Perform routine cleaning and disinfection.***
9. ***Record and report COVID-19 infections and deaths as required by mandatory OSHA rules in 29 CFR 1904.***
10. ***Implement protections from retaliation and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.***

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11. **Follow other applicable mandatory OSHA standards.**

*This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance, including but not limited to our firm's COVID-19 Resource Center. Readers with legal questions should consult the authors, John Vering ([jvering@sb-kc.com](mailto:jvering@sb-kc.com)), Mark Opara ([mopara@sb-kc.com](mailto:mopara@sb-kc.com)), John Neyens ([jneyens@sb-kc.com](mailto:jneyens@sb-kc.com)), Shannon Johnson ([sjohnson@sb-kc.com](mailto:sjohnson@sb-kc.com)) or other shareholders in Seigfreid Bingham's Employment Law Group, including: Brenda Hamilton, Julie Parisi, or Christopher Tillery or your regular contact at Seigfreid Bingham at 816-421-4460.*