

July 21 Deadline for Health Care Entities to Implement Final Provisions of OSHA's Emergency Temporary Standard on COVID-19

On June 10, 2021, the Occupational Safety and Health Administration (OSHA) issued a new emergency temporary standard (ETS) that applies, with limited exceptions, to settings where any employee provides health care services or health care support services. Affected health care employers were required to comply with many of the new ETS requirements by July 6, 2021, and the remaining requirements must be implemented by July 21, 2021.

General Overview of OSHA's ETS

The first step is for employers to assess whether they are [covered by the ETS](#). The ETS applies to workplaces where employees provide health care support services, which includes hospitals, nursing homes, emergency responders, assisted living facilities and employees who work where COVID-19 patients are treated. The COVID-19 health care ETS additionally applies to portions of hospital workplaces that are not defined as hospital ambulatory care settings.

However, the COVID-19 ETS has several exceptions including, but not limited to:

- Employees who provide first aid but are not a licensed health care 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;
- Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or
- Telehealth services performed outside of a setting where direct patient care occurs.

There are also certain exceptions for well-defined hospital ambulatory care settings and home health care settings where all employees are fully vaccinated.

Because most health care facilities implemented measures to minimize the spread of COVID-19 in 2020 that were consistent with Center of Disease Control (CDC) guidance, many of the ETS requirements may not require a change in policy. Much of the CDC's guidance for COVID-19 measures has stayed consistent,

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Jul 14, 2021

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including physical distancing, cleaning and disinfecting patient care areas or medical equipment. However, the ETS includes additional obligations for employers that require expansion upon the current COVID-19 practices:

- **Written COVID-19 Plan:** All employers must develop and implement a COVID-19 plan and employers with more than 10 employees are required to have their COVID-19 plan in writing. The plan must include a designated safety coordinator with the authority to ensure compliance. The plan must provide for a hazard assessment that involves input from non-managerial employees and their representatives.
- **Patient Screening and Management:** The ETS requirement of patient screening and management allows employers to further minimize the spread of COVID-19. Employers are encouraged to limit and monitor points of entry to the setting and to implement patient management strategies in accordance with CDC recommendations.
- **Employee Screening and Removal:** Employers must screen employees each shift through self-monitoring by the employee, or other measures implemented by employer. Employees with COVID-19 must immediately be removed from the workplace. In the event of a COVID-19 exposure, health care employers are required to notify the other employees who were in close contact with the individual and remove them from the workplace within 24 hours. Additionally, the ETS requires employers with more than 10 employees to compensate employees removed from the workplace due to the employee's COVID-19 diagnosis or close contact with another employee who tested positive for COVID-19.
- **Recordkeeping:** For employers with more than 10 employees, the ETS requires a COVID-19 log of all employee instances of COVID-19 without regard to occupational exposure and follow requirements for making records available to employees/representatives.
- **Vaccinations:** The ETS requires employers to support vaccination for each employee by providing reasonable time and paid leave to each employee for the vaccination and any side effects experienced following the vaccination.

Final Three Provisions of the ETS to Ensure are Implemented by July 21

The three requirements that will be enforced beginning on July 21, 2021, are:

- **Physical Barriers:** For fixed work locations *outside of direct patient care areas* where employees are not separated from other people by at least six feet,



employers must install cleanable or disposable solid barriers, except where they can demonstrate it is not feasible. Barriers must be sized to block face-to-face pathways based on where each person would normally sit or stand.

- **Ventilation:** For employers who own or control buildings or structures with *existing* HVAC systems, they must ensure the systems are used in accordance with manufacturer's instructions, intake ports are cleaned, maintained and cleared of debris, and meet several other criteria specified in the ETS.
- **Training:** all employers must work with non-managerial employees and their representatives to implement an employee training program at each facility. The training must be in a language and at a literacy level that the employee understands and cover a series of defined topics, including basic information on COVID-19, the employers policies and procedures including those related to personal protective equipment, cleaning and disinfecting, available sick leave and other benefits. The training must provide an opportunity for interactive questions and answers with a person knowledgeable in the covered subject matter as it relates to the employee's job duties.

OSHA has stated it will use discretion to avoid citing employers who are making a good faith effort to incorporate ETS requirements. However, OSHA will be conducting more in-person inspections to increase enforcement of ETS and health care employers are already covered by the National Emphasis Program that will also increase in-person inspections of health care facilities.

If you need assistance creating an ETS-compliant COVID-19 plan for your workplace or have other questions about implementing COVID-19 protections in your workplace, please contact your Reinhart attorney.

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