

OSHA Retracts Portion of COVID-19 Emergency Temporary Standard for Healthcare Employers; Will Continue Enforcement Under General Duty Clause

On December 27, 2021, the Occupational Safety and Health Administration (OSHA) announced it is withdrawing the non-recordkeeping portion of the Emergency Temporary Standard for healthcare employers (Healthcare ETS). However, the requirements outlined under the Healthcare ETS will now serve as guidelines for compliance with the general duty clause of the Occupational Safety and Health Act (OSH Act).

Issued on June 21, 2021, the Healthcare ETS outlined rigorous safety standards (previously discussed [here](#)) intended to protect workers from the spread of COVID-19 in settings where they provide healthcare or healthcare support services. The Healthcare ETS expired on December 21, 2021, leaving many employers in limbo regarding compliance and enforcement.

In its announcement, OSHA stated it will vigorously enforce safety standards related to the mitigation of COVID-19 in the healthcare industry. OSHA will enforce these standards under the OSH Act's general duty clause, which requires that each employer maintain a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees.

Employers will be considered in compliance with the general duty clause if they continue to comply with the terms of the Healthcare ETS. This likely includes maintaining a COVID-19 plan as required by the Healthcare ETS. Failure to comply with these terms could increase the risk of penalties for noncompliance.

OSHA did not rescind the COVID-19 log and reporting provisions of the Healthcare ETS. Thus, healthcare employers with 10 or more employees must continue to maintain a log with each instance identified by the employer in which an employee is COVID-19 positive, regardless of whether the instance is connected to exposure to COVID-19 at work.

The withdrawal of the Healthcare ETS also means that certain healthcare employers with 100 or more employees are now subject to the requirements of OSHA's COVID-19 Vaccination and Testing ETS. Healthcare employers subject to the Healthcare ETS were previously exempt from the Vaccination and Testing ETS.

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The exemption no longer applies now that the Healthcare ETS is no longer in effect.

Healthcare employers subject to the Centers for Medicare & Medicaid Services (CMS) mandatory vaccination rule (CMS Rule) are not subject to the Vaccination and Testing ETS. However, certain healthcare employers, such as assisted living facilities, that are not regulated by CMS or are not Medicare or Medicaid certified will be required to comply with the Vaccination and Testing ETS.

Healthcare employers should assess the implications of the withdrawal of the Healthcare ETS on their workplace and determine whether they are now covered by the CMS Rule or the Vaccination and Testing ETS. Employers that are now subject to the Vaccination and Testing ETS should begin to prepare to comply with the [upcoming January 10, 2022 deadline](#) as soon as possible.

If you have questions regarding the withdrawal of the Healthcare ETS, or if you are an assisted living facility that is now covered by the Vaccination and Testing ETS and you need assistance drafting ETS-compliance policies and procedures, please contact Brittany Lopez Naleid, [Shannon Toole](#), [Bob Lightfoot](#), [Tristan Dollinger](#) or your Reinhart attorney.

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