

EMPLOYMENT ALERT

**THE NEW OSHA EMERGENCY TEMPORARY STANDARD
AND UPDATED COVID GUIDANCE**

June 16, 2021

The New OSHA Emergency Temporary Standard

On June 10th OSHA issued its COVID-19 Emergency Temporary Standard (ETS). The ETS exclusively focuses on the healthcare industry, and encompasses workplace settings such as “hospitals, nursing homes, and assisted living facilities; emergency responders; home health care workers; and employees in ambulatory care settings where suspected or confirmed coronavirus patients are treated.”

Effective Date

While the ETS is effective immediately upon the date of publication in the Federal Register, covered employers are required to comply with most provisions within two weeks, and must adhere to the rest of the provisions within 30 days after the effective date. The ETS as of this date has not been published in the Federal Register.

Overview of New ETS Requirements

Covered employers must assign a designated safety coordinator with the authority to conduct a worksite-hazard assessment and draft a written plan to mitigate the spread of COVID-19. Covered employers are also required to develop and implement policies and procedures that comply with the Standard and Transmission-Based Precautions in accordance with CDC’s “Guidelines for Isolation Precautions.”

Healthcare settings must limit and monitor building entry points, and screen and triage all individuals entering the facility, including clients, residents, patients, delivery people, visitors, and non-employees.

The ETS requires healthcare employers to provide some employees with N95 respirators or other PPE when indoors. In circumstances where N95 respirators are not required to be used, employers must use the new “mini respiratory protection program” (included as 29 CFR 1910.504).

Covered healthcare employers must ensure that there is six feet of physical distance between their employees. If physical distancing is not feasible, employers must install partitions between

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workers where possible. Barriers must be installed in fixed workplace stations that are not direct-care areas.

Covered employers are also required to provide employees with paid time off to get vaccinated and to recover from vaccine side effects. Employees who are infected with COVID-19 or who may be contagious are required to work remotely or be separated from their fellow employees, or be given up to \$1,400 of paid time off per week. Tax credits in the American Rescue Plan may be available.

The ETS relieves fully vaccinated employees from masking, physical distancing, and partition requirements in “well-defined areas” where there is no reasonable expectation that any individual present could have a COVID-19 infection.

Covered employers are required to inform their workers that they cannot be retaliated against for exercising rights provided under the ETS measures, and that employers are obligated to implement the ETS at no cost to their employees.

Guidance for Non-Healthcare Sector Employers

For workplaces that are not in the healthcare sector, OSHA released revised guidance on June 10 (<https://www.osha.gov/coronavirus/safework>) stating that fully vaccinated workers do not have to follow the same cautionary protocols that unvaccinated people should follow. OSHA’s guidance also clarifies that employers are not required to continue measures to protect fully vaccinated workers who are not otherwise at-risk from possible virus exposure, unless more stringent state or local laws apply.

The new guidance focuses on unvaccinated employees and “at-risk” employees (for example, employees with medical conditions that are not fully protected by the vaccine). Items that are included in the new guidance as recommendations include:

- Granting paid time off for vaccinations
- Continuing isolation and quarantine for unvaccinated employees
- Physical distancing for unvaccinated employees or at-risk employees in common areas
- Limiting the number of unvaccinated/at-risk employees in one place (by telework, flexible schedules, etc.)

The OSHA guidance includes specific recommendations for manufacturing, retail and work-related travel.