

Health Care Providers Must Comply With OSHA's Emergency Temporary Standards by July 5

On June 10, 2021, the Occupational Safety and Health Administration (OSHA) issued its long-awaited [COVID-19 Emergency Temporary Standard](#) (ETS). A notable feature of the ETS, in addition to the timing of its issuance over a year into the pandemic, is that it applies only to employers providing health care services or health care support services and not to employers generally. The ETS was published in the [Federal Register](#) and took effect on June 21, 2021. Health care employers subject to the ETS must comply with the majority of its provisions by July 5, 2021, and must put the requisite physical barriers, ventilation, and training obligations in place by July 21, 2021.

Who Is Covered by the ETS?

While OSHA provides a [flowchart](#) advising who is covered by the ETS and who is not, the bottom line is that the ETS applies only to employers providing health care services or support services. The ETS defines “health care services” as “services that are provided to individuals by professional health care practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health.” Further, the ETS adds that health care services may be “delivered through various means including hospitalization, long-term care, ambulatory care, home health and hospice care, emergency medical response, and patient transport.” It also notes that autopsies are included as a health care service.

The ETS defines support services as “services that facilitate the provision of health care services,” including “patient intake/admission, patient food services, equipment and facility maintenance, housekeeping services, health care laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.”

What Does the ETS Require?

Employers covered by the ETS must do the following, all at no cost to the employees:

- Develop and implement a **COVID-19 plan** for their workplace that designates a “safety coordinator” to ensure compliance, includes a workplace-specific hazard assessment and outlines policies to minimize the risk of COVID-19 transmission. The ETS also requires that nonmanagerial employees be included in the development and implementation of the plan. And if the employer has more than 10 employees, the plan must be in writing.
- Implement **patient management** strategies that limit and monitor points of entry to settings where direct patient care is provided. Places that screen and triage patients, clients, and other visitors are included.
- Implement **employee management** strategies that screen employees before each workday and shift; provide employer-required testing at no cost to the employee; require employees to notify management when they are COVID-19 positive, suspected of having COVID, or are symptomatic; notify employees within 24 hours when a person has been in the workplace and is COVID-19 positive; and follow requirements and specified Centers for Disease Control and Prevention (CDC) guidance regarding removing and returning workers from the workplace. They must also ensure all employees receive **training** such that they comprehend COVID-19 transmission, situations in the workplace that could result in infection, and relevant policies and procedures.
- Develop and implement policies and procedures to adhere to **standard and transmission-based precautions** in accordance with CDC’s “Guidelines for Isolation Precautions.”
- Provide and ensure employees wear **facemasks** over the nose and mouth when indoors or when occupying a vehicle with other people for work purposes while also allowing the voluntary use of **respirators** instead of facemasks.

- When an **aerosol-generating procedure** is performed, limit employees present to only those essential to the procedure and use an airborne infection isolation room, if available. Clean and disinfect surfaces and equipment after completing the procedure.
- Ensure **physical distancing** (six feet) among employees, clients, and visitors while indoors and install cleanable or disposable **physical barriers** at each fixed work location in nonpatient care areas where each employee is not separated from other people by at least six feet.
- Follow standard practices for **cleaning and disinfecting** surfaces and equipment according to CDC guidelines in patient care areas, resident rooms, and medical devices and equipment. In all other areas, clean high-touch surfaces and equipment at least once a day and provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible handwashing facilities.
- Ensure that employer-owned or controlled existing **ventilation** systems are used in accordance with the manufacturer's instructions and design specifications for the systems and that air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it.
- Provide reasonable time and paid leave for **vaccinations** and vaccine side effects.
- If you have more than 10 employees, establish 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. Also, **report** to OSHA each work-related COVID-19 fatality within eight hours of learning about the fatality; and each work-related COVID-19 inpatient hospitalization within 24 hours of learning about the inpatient hospitalization.
- **Anti-retaliation**: Inform employees of their rights to the protections required by this standard. Do not discharge or discriminate against employees in any manner for exercising these rights or for engaging in actions required by the standard.

OSHA makes sure to note that the ETS **does not apply** to the following workplace settings:

1. First aid performance by an employee who is not a licensed health care provider;
2. Pharmacists dispensing prescriptions in retail settings;
3. Nonhospital ambulatory care settings where all nonemployees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
4. Well-defined hospital ambulatory care 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 permitted to enter those settings;
5. Home health care 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;
6. Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing, etc.); or
7. Telehealth services performed outside of a setting where direct patient care occurs.

Again, all the requirements listed must be implemented at no cost to employees. For further information on the new ETS, OSHA has published a summary of the [rules](#) and addressed dozens of [FAQs](#).

OSHA has acknowledged that it plans to use its enforcement discretion to avoid citing employers making a good faith effort to comply with the ETS. And while it stands to reason that, after much time and effort expended to draft and implement these rules, OSHA will look to enforce these rules with some discretion. Our hope is that for most health care employers, compliance with the ETS will involve the refinement of existing COVID-19 safety protocols rather than a complete overhaul.

We recommend that you evaluate your current COVID-19 policies and procedures to ensure compliance with the requirements of the ETS. Please contact [Doug Griswold](#), [Cal Marshall](#), or your relationship attorney with any questions you may have regarding the compliance of your policies and procedures.