

OSHA Update for Health Care Providers With 100 or More Employees

We want to make health care providers with 100 or more employees aware that, on December 27, 2021, the Occupational Safety and Health Administration (OSHA) announced the expiration of its June 2021 Emergency Temporary Standard for health care employers (the Health Care ETS).

The Health Care ETS implemented a number of COVID-19 related protective requirements for health care workplaces but did not include a vaccination mandate. This development is notable because the separate OSHA Vaccination or Testing ETS, from November 2021, which applies to employers with 100 or more employees, contained an exemption for workplaces already subject to the requirements of the Health Care ETS.

Now that the Health Care ETS has expired, it appears the exemption is no longer available. That means the Vaccination or Testing ETS will now apply to health care providers with 100 or more employees that had been subject to the Health Care ETS until its expiration.

When compliance with the Vaccination or Testing ETS will be required varies depending on whether an organization is in a state directly overseen by OSHA (where enforcement is imminent, barring a stay on enforcement by the U.S. Supreme Court, which hears oral arguments on January 7) or in a “state plan” state (such as Tennessee), where some additional time will elapse (how much is uncertain at present) before enforcement as states implement their own conforming rules.

OSHA’s [press release](#) further clarified that the log and reporting provisions of the Health Care ETS* remain in effect. Although the remainder of the Health Care ETS is technically no longer in effect, OSHA indicated that it will continue to enforce the “general duty” clause under the Occupational Safety and Health Act of 1970, and therefore recommended that health care workplaces continue to comply with the Health Care ETS as a means to maintain compliance with the general duty clause. OSHA also announced that it plans to issue a final standard aimed at protecting health care workers from COVID-19 hazards on an ongoing basis, but it is not yet clear when that will occur or whether a final standard would exempt certain health care workplaces from the requirements of the Vaccination or Testing ETS at a later date.

Our Chambliss team continues to monitor health care developments, including issues related to OSHA rulemaking. Please contact [Cal Marshall](#), a member of our COVID-19 Task Force, or your relationship attorney if you have any questions or need additional information.