

LABOR AND EMPLOYMENT LAW INFORMATION MEMO

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OSHA Releases COVID-19 Workplace Safety Rule for Health Care Employers

At long last, the Occupational Safety and Health Administration (OSHA) has finally released a COVID-19 standard that it has stated was coming since January. Healthcare employers will be required to abide by the new [emergency temporary standard](#) (ETS) published by OSHA (the last time OSHA issued an emergency standard was in 1983 to address asbestos exposure). The emergency workplace safety rule was published on OSHA's website on June 10, 2021 and is **effective immediately** upon publication in the Federal Register. Voluntary guidance for other industries will follow.

Previously, OSHA did not have a rule that addressed steps employers are required to take to protect employees from the airborne spread of pathogens. This newly released, mandatory emergency rule aligns with existing voluntary OSHA guidance but now has teeth: the power of enforcement with citations and monetary penalties. Covered employers have 14 days to comply with most provisions of the ETS, although some provisions such as those involving physical barriers, ventilation and training must be completed within 30 days of the standard's publication in the Federal Register.

The COVID-19 ETS applies to all settings where any employee provides healthcare services or healthcare support services. OSHA has provided a [flow chart](#) to help employers determine if their workplace is covered under the COVID-19 ETS. Notably the ETS exempts fully vaccinated workers from masking, distancing, and barrier requirements in a workplace setting where there is no reasonable expectation that any person who may have COVID-19 will be present.

COVID-19 Protections:

The ETS requirements include the following:

- *Develop and Implement a COVID-19 Plan*

All covered employers must develop and implement a COVID-19 plan and must do so in writing if they employ more than 10 employees. The plan must include:

- a designated safety coordinator who must have compliance enforcement authority;
- a workplace-specific hazard assessment;
- an outline of the involvement of non-supervisory employees in hazard assessment and the development and implementation of the plan; and
- policies and procedures to minimize the risk of transmission of COVID-19 to other employees.

- *Patient Screening and Management*

Employers are required to:

- limit and monitor points of entries to workplace settings where direct patient care is provided;
- screen and triage patients, clients, other non-visitors including non-employees; and
- implement patient management strategies.

- *Develop and Implement policies and procedures to adhere to the Standard and Transmission-Based precautions based on the CDC's "Guidelines for Isolation Precautions"*
- *Personal Protective Equipment (PPE)*
Employers are required to:
 - provide and ensure each employee wears a facemask indoors and when occupying a vehicle with other people for work purposes; and
 - provide and ensure employees use respirators and other PPE for exposure to people with suspected or confirmed COVID-19, and for aerosol-generating procedures on a person with suspected or confirmed COVID-19.
- *Implement specific aerosol-generating procedures on a person with suspected or confirmed COVID-19*
- *Ensure physical distancing*
- *Install cleanable and disposable physical barrier*
- *Follow CDC guidelines to clean and disinfect surfaces and equipment*
- *Ensure that employer-owned or controlled existing HVAC systems are used in accordance with 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*
- *Ensure health screening and medical management*
- *Provide reasonable time and paid leave for vaccinations and vaccine side effects*
- *Ensure all employees receive training so they comprehend COVID-19 transmission, tasks and situations in the workplace that could result in infection, and relevant policies and procedures*

In certain circumstances, the OSHA COVID-19 Healthcare Emergency Temporary Standard (ETS) requires [employers to notify](#) their employees about potential COVID-19 exposure in the workplace. The ETS also protects employees from retaliation when exercising their rights under the ETS or for engaging in actions under the standard. Employers with more than 10 employees are also required to 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/representatives. It also requires that an [employer reports](#) all work-related COVID-19 fatalities and in-patient hospitalizations to OSHA.

In very limited and specific circumstances, the ETS also applies to instances where even though workers are not exposed to suspected or confirmed sources of COVID-19, respiratory use could offer enhanced worker protection. The program is not a replacement or substitute for OSHA's regular Respiratory Protection Standard. Notably, the program requires employers to provide specific training on user seal checks for respirators.

OSHA has also released a [Frequently Asked Questions](#) page to assist employers to better understand their compliance responsibilities under the ETS.

OSHA has stated that it will update the ETS, as appropriate, “where it finds a grave danger from the virus no longer exists” for covered employees, or “new information indicates a change in measures necessary to address the grave danger.”

In the meantime, employers in healthcare settings, such as hospitals, nursing homes, assisted living facilities, ambulatory care facilities and those employing home healthcare workers, must review the ETS and take action to develop and implement plans to comply with the standard within the stipulated timelines.

If you have any questions about the information presented in this memo, please contact [Michael Billok](#), [Nihla Sikkander](#), any [attorney](#) in Bond’s [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

