

2022
BUSINESS IN 2021
WEEKLY WEBINAR SERIES
2020
2019
2018



1

Introduction



Andrew D. Bobrek
Member
abobrek@bsk.com
Syracuse, NY



2

Dismissal of Federal Lawsuit Challenging Hospital's Mandatory Vaccination Policy



Mallory A. Campbell

Associate
mcampbell@bsk.com
New York, NY



3

OSHA's COVID-19 Healthcare Emergency Temporary Standard & General Industry Guidance



Nihla F. Sikkander

Associate
nsikkander@bsk.com
Albany, NY



4

- The ETS is **effective immediately** upon publication in the Federal Register
- **14 days** to comply with most provisions
- 30 days to comply with requirements such as physical barriers, ventilation and training
- OSHA can enforce this standard with citations and monetary penalties
- Remains in effect until superseded by a permanent standard (usually within 6 months of ETS)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.”



5

Scope

- **Mandatory**
- **Applies to *healthcare and healthcare support service workers in settings where individuals with COVID-19 are reasonably expected to be present***
- **Examples:**
 - Hospitals
 - Nursing Homes
 - Assisted Living Facilities
 - Ambulatory Care Facilities
 - Employers of home healthcare workers
 - Healthcare setting embedded within a non-healthcare setting (e.g., medical clinic in a manufacturing facility)
 - When emergency responders or licensed health care providers enter a non-health care setting to provide services



6

Exceptions include...

Setting	Condition to be met..
Non-hospital ambulatory care settings	<ul style="list-style-type: none"> • ALL non-employees are screened prior to entry AND • People with suspected/confirmed COVID-19 are not permitted to enter
Well-defined hospital ambulatory care settings	<ul style="list-style-type: none"> • Where ALL employees are fully vaccinated; • All non-employees are screened prior to entry AND • People with suspected/confirmed COVID-19 are not permitted to enter
Home healthcare settings	<ul style="list-style-type: none"> • 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
Healthcare support services	<i>Not performed in a healthcare setting (e.g., off-site medical billing, off-site laundry)</i>

- Dispensing of prescriptions by pharmacists in retail settings
- Telehealth services performed outside of a setting where direct patient care occurs
- First aid performed by an employee who is not a licensed healthcare provider;

* See OSHA [Flowchart](#)

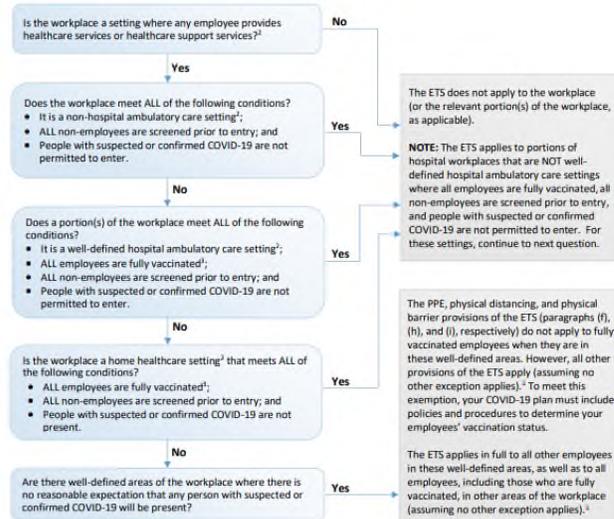


7

Is your workplace covered by the COVID-19 Healthcare ETS?



Employers may use the flow chart and footnote 1, below, to determine whether and how your workplace is covered by the ETS.¹ For the full text of the ETS, refer to **29 CFR 1910.502** at www.osha.gov/coronavirus/ets.



8

HIGHLIGHTS: COVID-19 Protection Benefits

- **Medical Removal Protection Benefits (MRP)**
- Employer is obligated to pay employee when they are medically removed from work:

EMPLOYER SIZE	MRP
10 or fewer employees	No payment necessary
Less than 500 employees*	<i>Week 1 and Week 2 after removal : regular pay up to \$1400 per week Week 3 onwards : 2/3rds of regular pay, up to \$200 per day (~\$1000 per week)</i>
500 or more employees	Regular salary up to \$1400 per week for the entire period of removal, until return to work criteria is met.

- All employers with 10 or more employees must maintain regular benefits
- Provide reasonable time for vaccinations and vaccine side effects
- Job Protection



9

HIGHLIGHTS : Reporting and Notification

- **Reporting Requirements:**
 - Report each work-related COVID-19 fatality, within 8 hours of learning of fatality
 - Report each in-patient hospitalization of any employee, within 24 hours of learning of hospitalization
- **COVID-19 Log**
 - 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
- **[Employer Notification Tool](#)**
 - In certain circumstances, the ETS requires employers to notify their employees about potential COVID-19 exposure



10

COVID-19 Log

The OSHA COVID-19 Healthcare Emergency Temporary Standard (ETS) requires employers to keep a COVID-19 Log if they have more than 10 employees on [the date the ETS is published in the Federal Register] (the effective date of the ETS) (See 29 CFR 1910.502(q)). Employers are required to record on the COVID-19 Log each instance of an employee being confirmed COVID-19 positive (i.e., case that tested positive or was diagnosed by a licensed healthcare provider), whether it was contracted at work or elsewhere.

(Employers may use this form or any other form containing similar information)

Name of Business/Employer: _____

Address: _____

Name and Contact Information of Employer's Contact Person: _____

Employee Name and Occupation (Job Title)	Employee Contact Information (Address, Phone Number, or email address)	Employee Work Location (Address, Department, Floors, or Room Numbers)	Most Recent Day the Employee Was Present in the Workplace (Date)	Date of COVID-19 Diagnosis or Positive Test for COVID-19	Date of Onset of Symptoms (if Applicable)	Brief Description or Additional Information

Sample Email Notification to Employees Working in the Same Well-Defined Portion of the Workplace

Dear [Employee Name],

We have been notified that an individual who was present in our workplace on [MM/DD/YYYY] has been diagnosed with COVID-19. We are separately notifying people who appear to have had close contact with the individual, but we want to alert everyone working in the same well-defined portion of the workplace to the possibility of exposure. If you experience symptoms of COVID-19, such as fever, chills, cough, difficulty breathing, new loss of taste or smell, or other symptoms, please contact [COVID-19 Safety Coordinator Name and Contact Information] and consider consulting with your healthcare provider about COVID-19 testing. As always, [Company Name] will protect all employee medical information.

Sincerely,
[Signatory]



MORE HIGHLIGHTS

- Develop and Implement a COVID-19 plan
 - In writing if more than 10 employees
 - Designated safety coordinator
 - Workplace-specific hazard assessment
 - Policies and procedures
 - Non-supervisory employees' involvement
- Patient Screening and Management
- Standard and Transmission-Based precautions: Develop and implement policies and procedures based on the CDC's "Guidelines for Isolation Precautions"
- PPE Requirements
- Implement specific aerosol-generating procedures
- Physical distancing, physical barriers
- HVAC system requirements
- 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
- Mini-Respiratory Protection program (NOT a substitute for OSHA's regular Respiratory protection standard)



UPDATED GENERAL GUIDANCE FOR OTHER EMPLOYERS

- OSHA also updated its COVID-19 guidance. See [link](#).
- Voluntary: To “help employers and workers not covered by the ETS.”
- Focuses on:
 - The protection of unvaccinated or otherwise at-risk workers
 - Encourages vaccination
 - Asks employers to:
 - provide paid time off for employees to get vaccinated
 - provide free face coverings or respirators to unvaccinated employees
 - implement physical distancing requirements for unvaccinated employees
 - Train and educate employees on Covid-19 policies



13

Other COVID-19 OSHA Actions unrelated to ETS

- *Walsh v. Community Health Center of Richmond, Inc. et al*
Docket No.1:21-cv-03094 (E.D.N.Y. Jun 01, 2021)
 - One of the first OSHA-initiated claims brought against an employer over pandemic safety issues
 - An employee raised concerns to company management that in-person attendance at a March 2020 staff meeting could lead to transmission and contraction of COVID-19. The worker attempted to reschedule the meeting by telephone, but ultimately refused to attend the meeting in-person after management refused the scheduling change. The center and CEO later suspended and then terminated the employee.
- Cause of Action: Discrimination in violation of the OSH Act
- Relief Sought:
 - Lost Wages, Punitive Damages, expunging personnel records with references to suspension/termination of complainant, post a prescribed notice on site.



14

From the Viewer “Mail Bag”



Andrew D. Bobrek

Member
abobrek@bsk.com
Syracuse, NY



15

From the Viewer “Mail Bag”...

HERO Act effective dates?

Publishing of the HERO Act templates?

More PTO under OSHA’s ETS?

Can we withdraw remote work approval?

What happens when NYSPSL is exhausted?

Is daily screening still required?



16

Update from Albany



Caitlin A. Anderson

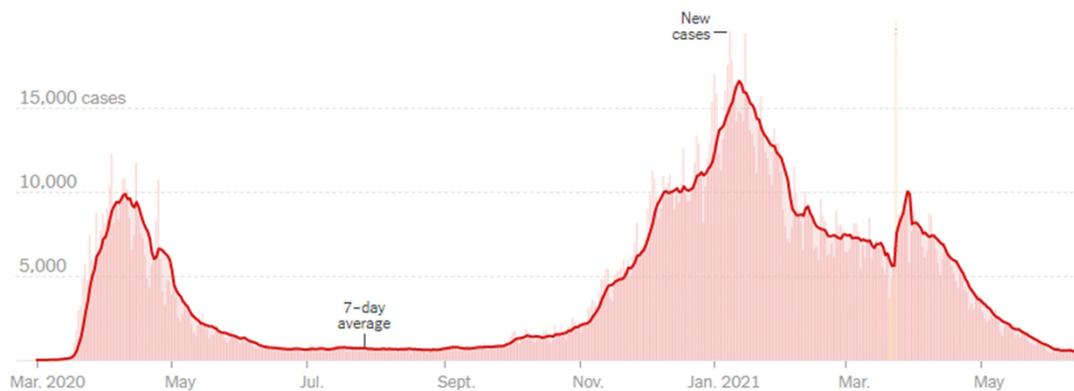
Associate
canderson@bsk.com
Albany, NY



17

The New York Times

New reported cases



18

Vaccination progress

- All New Yorkers:
 - 50% fully vaccinated
 - 58% one dose
- 18 and older:
 - 62% fully vaccinated
 - 70% one dose



19

Adult vaccination rates by state and territory

Name	At least one dose, 18+ †	Fully vaccinated, 18+
Vermont	84%	73%
Hawaii	82%	61%
Massachusetts	81%	69%
Connecticut	77%	69%
New Jersey	76%	65%
Maine	76%	69%
Rhode Island	74%	66%
Pennsylvania	74%	58%
New Mexico	73%	63%
Maryland	72%	64%
California	72%	58%
New Hampshire	72%	63%
Washington	72%	63%
Washington, D.C.	70%	59%
New York	70%	62%



20

We hit 70%! Now what?

- Updates from the Governor today?
- According to a press release from last week:
 - Reopening guidance will be lifted for nearly every industry
 - Unvaccinated people must still continue to wear masks
- Events restrictions? Gathering restrictions?



21

O Canada?

- Canada will no longer require quarantine for fully vaccinated Canadians returning to Canada, but no plan announced for reopening the border or allowing fully vaccinated foreigners into the country.



22

New York Legislative Session

- Passed 634 bills in two weeks.
- HERO Act Chapter Amendment – passed Assembly/Senate
- Paid Family Leave – Adds siblings to the definition of family member for the purposes of paid family leave
- Whistleblower protections expanded
- Prior written notice to all employees regarding types of electronic monitoring which may occur



23

Dismissal of Federal Lawsuit Challenging Hospital's Mandatory Vaccination Policy

Mallory Campbell, mcampbell@bsk.com

OSHA's COVID-19 Healthcare Emergency Temporary Standard & General Industry Guidance

Nihla Sikkander, nsikkander@bsk.com

From the Viewer "Mail Bag"

Andy Bobrek, abobrek@bsk.com

Update from Albany

Caiti Anderson, canderson@bsk.com

New York Employment Law: The Essential Guide

Bar Association Members can buy the book from the bar [here](#).

Non-Bar Association Members can purchase through Amazon [here](#).



24

The information in this presentation is intended as general background.
It is not to be considered as legal advice.
Laws change often and information becomes rapidly outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form, without
the written authorization of Bond, Schoeneck & King PLLC.

