

OSHA ISSUES EMERGENCY TEMPORARY STANDARD TO PROTECT HEALTHCARE WORKERS FROM COVID-19

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OSHA Emergency Temporary Standard

On January 21, 2021 – the day after the presidential inauguration – President Biden issued an [Executive Order](#) directing the federal Occupational Safety and Health Administration (OSHA) to take action to better protect employees from contracting COVID-19 in the workplace. Now, six months later, OSHA has published the long-anticipated [COVID-19 emergency temporary standard](#) (ETS) which became effective on June 21, 2021 when it was published to the [Federal Register](#).

The ETS is aimed at protecting workers that are facing the most coronavirus hazards: those working in healthcare settings. Although COVID-19 cases are on the decline throughout the country, only 45.6%^[1] of the U.S. population is fully vaccinated and thus the nation's healthcare workers continue to confront the coronavirus threat on a daily basis. Indeed, the [U.S. Secretary of Labor Marty Walsh stated](#): "Too many of our frontline healthcare workers continue to be at high risk of contracting the coronavirus." As such, the ETS is directed toward those employees that provide healthcare services or healthcare support services, such as employees in hospitals, nursing homes, assisted living facilities, emergency responders, home healthcare workers, and employees in ambulatory settings where suspected or confirmed coronavirus patients are treated.

The ETS requires healthcare employers to engage in elevated safety measures to protect their employees from COVID-19. The following are some (but not all) of the requirements healthcare employers must follow if non-exempt:

- Conduct a hazard assessment and develop and implement a written plan to mitigate the spread of COVID-19.
- Manage patients in the healthcare setting by monitoring and limiting points of entry, screening and triaging patients, clients, and visitors, and implementing other patient management strategies.
- Engage in screening processes for employees, such as self-monitoring, online screening tools, questionnaires, and having an "employees only" entrance.
- Require employees to wear facemasks indoors and when occupying a vehicle with others for work purposes. In some instances, N95 respirators must be provided.
- Limit employees present during aerosol-generating procedures on a person with suspected or confirmed COVID-19 infection and implement other protective procedures.
- Keep all persons indoors at least six feet apart, erect barriers when physical distancing is not feasible, and train employees to understand COVID-19 transmission.
- Ensure that employer-owned or controlled HVAC systems are used in accordance with the manufacturer's instructions and that air filters are rated Minimum Efficiency Report Value (MERV) 13 or higher if the system allows it.

The ETS exempts fully vaccinated workers from wearing masks, engaging in physical distancing, and using barrier requirements when such employees are in well-defined areas where there is no reasonable expectation that any person will be present with suspected or confirmed COVID-19 infection.

In addition to implementing safety measures, healthcare employers are required to provide employees with other tools to navigate the workplace during the COVID-19 pandemic. Healthcare employers must provide reasonable time off and paid leave to employees during the vaccination process and during any period of side effects. Further, healthcare employers must inform their employees of their anti-retaliation rights and that they cannot be discriminated or retaliated against for exercising their rights under the ETS or engaging in actions that are required by the ETS.

The ETS establishes new legal requirements that may not have been included in an employer's existing COVID-19 protocols, and thus covered healthcare employers are encouraged to assess and revise their protocols in advance of the upcoming compliance deadlines. Covered healthcare employers must comply with most provisions in the ETS by **July 6, 2021**, and must fulfill their obligations to provide physical barriers, ventilation, and training by **July 21, 2021**. Importantly, healthcare employers should understand their obligations to report work-related COVID-19 fatalities and in-patient hospitalizations to OSHA as well as to record employee instances of COVID-19.

[1] The percentage of the U.S. population that is fully vaccinated comes from the CDC Data Tracker as of June 24, 2021. See <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

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