



COVID-19 Workplace Safety Rules  
Occupational Safety and Health Administration  
Emergency Temporary Standard

## **Background**

On Thursday, June 10, 2021, the Occupational Safety and Health Administration (OSHA) within the Department of Labor (DOL) announced they [will issue an Emergency Temporary Standard](#) (ETS) to help protect healthcare workers from contracting COVID-19. While this update largely reflects guidance recommendations previously issued from OSHA on COVID-19 safety, two principal changes occur that affects ANCOR members.

- 1) The forthcoming guidance (once published in the Federal Register) will be mandatory for up to 6 months after issuance.
- 2) This is mandatory for healthcare settings only.

Areas reviewed below include:

- 1) Applicability of the new Emergency Temporary Standard and which healthcare settings/providers are not required to adhere to it.
  - a. The definitions of healthcare services and healthcare support services.
  - b. Further exemptions from the ETS.
- 2) Key Requirements of the ETS on the COVID-19 plan.
  - a. Details on how to develop and implement a COVID-19 plan.
  - b. Required elements in a COVID-19 plan to minimize the risk of transmission.
- 3) Effective Date and Enforcement.
- 4) Impact of the ETS on State OSHA Plans
- 5) Additional Resources

## **Applicability of the ETS**

The ETS applies, with some exceptions, to settings where any employee provides health care services or health care support services (see below for definitions). The ETS is aimed at protecting workers facing the highest COVID-19 hazards — those working in health care settings where suspected or confirmed COVID-19 patients are treated. **This includes employees in hospitals, nursing homes and assisted living facilities; emergency responders; home health care workers; and employees in ambulatory care facilities where suspected or**

**confirmed COVID-19 patients are treated.** According to the OSHA acting administrator, this will affect up to 10.3 million healthcare workers in the U.S.

It does not apply to:

- Well-defined hospital ambulatory care settings where all employees are fully vaccinated, all non-employees are screened prior to entry, and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- Non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- **Home health care settings where all employees are fully vaccinated, all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;**
- **Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing);**
- Telehealth services performed outside of a setting where patients are physically present;
- First aid performed by an employee who is not a licensed health care provider; or
- Dispensing of prescriptions by pharmacists in retail settings.

Further, the ETS exempts fully vaccinated workers from masking, distancing, and barrier requirements when in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, e.g., an employee break room.

#### **Definition of “Healthcare services” ([page 7](#))**

“Healthcare services mean services that are provided to individuals by professional healthcare practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. **Healthcare services are delivered through various means including: hospitalization, long-term care, ambulatory care, home health and hospice care, emergency medical response, and patient transport.** For the purposes of this section, healthcare services include autopsies.”

#### **Definition of “Healthcare support services” ([page 7](#))**

“Healthcare support services mean services that facilitate the provision of healthcare services. Healthcare support services include patient intake/admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.”

#### **Further Exemptions**

OSHA does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption for “well-defined hospital ambulatory settings” or “home healthcare settings where all employees are vaccinated, and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present”.

Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients, or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption.

### **Key Requirements of the ETS**

**COVID-19 Plan.** Conduct a hazard assessment and develop and implement a COVID-19 plan for each workplace.

- Note: this plan should be principally similar to any COVID-19 plans from previous OSHA recommended guidance, however, this new ETS may give OSHA “greater enforcement teeth” than under the Occupational Safety and Health Act's general duty clause, which requires employers to provide a work environment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

### **How to develop and implement your COVID-19 Plan**

- The employer must develop and implement a COVID-19 plan for each workplace. If the employer has multiple workplaces that are substantially similar, its COVID-19 plan may be developed by workplace type rather than by individual workplace so long as all required site-specific information is included in the plan.
- If the employer has more than 10 employees, the COVID-19 plan must be written.
- The employer must designate one or more workplace COVID-19 safety coordinators to implement and monitor the COVID-19 plan, and the coordinator(s) must be knowledgeable in infection control principles and practices. The safety coordinator(s)' name(s) must be documented in any written COVID-19 plan.
- The employer must conduct a workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19. In order for an employer to be exempt from providing controls in a well-defined area based on employees' fully vaccinated status, the COVID-19 plan must include policies and procedures to determine employees' vaccination status.

- The employer must seek the input and involvement of non-managerial employees on the development of the plan and must monitor each workplace to ensure the ongoing effectiveness of the COVID-19 plan and update it as needed.
- The COVID-19 plan must address the hazards identified by the assessment and include policies and procedures to minimize the risk of transmission of COVID-19 for each employee through the sections labeled below.
- Although the employer's COVID-19 plan must account for the potential COVID-19 exposures to each employee, the plan can do so generally and need not address each employee individually.
- When employees of different employers share the same physical location, each employer must effectively communicate its COVID-19 plan to all other employers, coordinate to ensure that each of its employees is protected as required by this section, and adjust its COVID-19 plan to address any particular COVID-19 hazards presented by the other employees. This requirement does not apply to delivery people, messengers, and other employees who only enter a workplace briefly to drop off or pick up items.
- An employer with one or more employees working in a physical location controlled by another employer must notify the controlling employer when those employees are exposed to conditions at that location that do not meet the requirements of this section; and **Protect employees who in the course of their employment enter into private residences or other physical locations controlled by a person not covered by the OSH Act (e.g., homeowners, sole proprietors).** This must include procedures for employee withdrawal from that location if those protections are inadequate.

#### **Required Elements in COVID-19 Plan to Minimize the risk of Transmission**

- Patient screening and management. Limit and monitor points of entry to settings where direct patient care is provided. Screen and triage patients, clients, residents, delivery people and other visitors and nonemployees entering the setting for symptoms of COVID-19. Implement patient management strategies.
- Standard and Transmission-Based Precautions. Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with [CDC guidelines](#).
- Personal protective equipment (PPE)
  - Provide and ensure employees wear facemasks when indoors and when occupying a vehicle with another person for work purposes. Ensure facemasks are worn over the nose and mouth.

- Provide and ensure employees wear 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.
- Provide respirators and other PPE in accordance with CDC's Standard and Transmission Based Precautions.
- Allow voluntary use of respirators instead of facemasks.
- Aerosol-generating procedures on persons with suspected or confirmed COVID-19. Consistent with CDC guidelines, for aerosol-generating procedures on persons with suspected or confirmed COVID-19, limit employees present to only those who are essential, perform procedures in an airborne infection isolation room (AIIR), if available, and clean and disinfect surfaces and equipment.
- Physical distancing. Keep employees at least 6 feet apart from all other people when indoors except when impossible, such as when delivering medical care.
- Physical barriers. At each fixed work location outside of direct patient care areas (e.g., entryway/lobby, check-in desks, triage, hospital pharmacy windows, bill payment) where each employee is not separated from all other people by at least 6 feet of distance, the employer must install cleanable or disposable solid barriers, except where the employer can demonstrate it is not feasible.
- Cleaning and disinfection. Follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC guidelines in patient care areas, resident rooms, and for medical devices and equipment. In all other areas, clean high-touch surfaces and equipment at least once a day. Provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible handwashing facilities.
- Ventilation. Employers who own or control buildings or structures with existing heating, ventilation, and air conditioning (HVAC) systems must ensure that:
  - The HVAC systems are used in accordance with the HVAC manufacturer's instructions and the design specifications of the HVAC systems;
  - The amount of outside air circulated through its HVAC systems and the number of air changes per hour are maximized to the extent appropriate;
  - All air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC systems. If MERV-13 or higher filters are not compatible with the HVAC systems, employers must use filters with the highest compatible filtering efficiency for the HVAC systems;
  - All air filters are maintained and replaced as necessary to ensure the proper function and performance of the HVAC systems; and
  - All intake ports that provide outside air to the HVAC systems are cleaned, maintained, and cleared of any debris that may affect the function and performance of the HVAC system.

Where the employer has an existing airborne infection isolation room (AIIR), the employer must maintain and operate it in accordance with its design and construction criteria. OSHA clarifies that this section does not require installation of new HVAC systems or AIIRs to replace or augment functioning systems.

- Health screening and medical management. Employers are required to:
  - Screen employees before each work day and shift, such as by asking them to self-monitor;
  - Provide testing, when employer-required, at no cost to the employee;
  - Require each employee to promptly notify the employer when the employee is COVID-19 positive, suspected of having COVID-19, or experiencing certain symptoms;
  - Notify, within 24 hours, certain employees if a person who has been in the workplace is COVID-19 positive;
  - Follow requirements to remove employees who have suspected or confirmed COVID-19, certain COVID-19 symptoms, or have had close contact to a person who is COVID-19 positive in the workplace. This includes making decisions on returning employees to work in accordance with guidance from a licensed health care provider or specified CDC guidance;
  - Continue to pay employees removed from the workplace in most circumstances.
- Vaccination. Provide reasonable time and paid leave for vaccinations and vaccine side effects.
- Training. Ensure each employee receives training in a language and at a literacy level the employee understands so that that the employee comprehends disease transmission, tasks and situations in the workplace that could result in COVID-19 infection, and relevant policies and procedures. Ensure each employee receives additional training when changes occur that affect the employee's risk of infection, if policies or procedures are changed, or when there is an indication that an employee has not retained necessary understanding or skill.
- Anti-Retaliation. Inform employees of their rights to the protections required by the ETS and do not discharge or in any manner discriminate against employees for exercising these rights or for engaging in actions required by the standard.
- Recordkeeping. For employers with more than 10 employees, establish a COVID-19 log of all employee cases of COVID-19 without regard to occupational exposure and follow requirements to make records available to employees.
- Reporting of COVID-19 fatalities and hospitalizations. Report to OSHA each work-related COVID-19 fatality within eight hours of learning of the fatality and each work-related COVID-19 in-patient hospitalizations within 24 hours.

## **Effective Date and Enforcement**

The ETS is effective immediately upon publication in the Federal Register. Employers must comply with most provisions within 14 days of publication, and with the remaining provisions, including physical barriers, ventilation and training requirements, within 30 days. OSHA will use its enforcement discretion to avoid citing employers who are making a good faith effort to comply with the ETS.

OSHA will continue to monitor trends in COVID-19 infections and deaths as more of the workforce and the general population become vaccinated and the pandemic continues to evolve. Where OSHA finds a grave danger from the virus no longer exists for the covered workforce (or some portion of it), or new information indicates a change in measures necessary to address the grave danger, OSHA will update the ETS, as appropriate. This is in effect for up to 6 months, during which a permanent rule could be considered.

OSHA will accept written comments on any aspect of this ETS and whether this ETS should become a final rule by 30 days after it is published in the Federal Register.

## **Impact of the ETS on State OSHA Plans**

When federal OSHA issues an ETS, states and U.S. territories with their own OSHA-approved occupational safety and health plans (state plans) must either amend their standards to be identical or at least as effective as the new standard, or show that their standard is at least as effective as the new federal standard. Adoption of the ETS by state plans must be completed within 30 days of the promulgation date of the federal final rule.

OSHA says that state or local government mandates or guidance (e.g., legislative action, executive order, health department order) that go beyond and are not inconsistent with the ETS are not intended to be limited by this ETS. For example, OSHA does not intend to preempt state or local COVID-19 testing requirements or state or local requirements for visitors to wear face coverings whenever they enter a hospital or other health care facility.

## **Additional Resources**

[Press release](#) from OSHA

Emergency Temporary Standard [Rule](#) Language

[OSHA Flowchart](#) on ETS