

DOL ISSUES EMERGENCY WORKPLACE SAFETY RULES FOR HEALTHCARE EMPLOYERS

June 21, 2021

On June 10, 2021, the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") issued an emergency temporary standard ("ETS") aimed at protecting health care workers from COVID-19 infections while on the job. The move comes nearly a year after Virginia adopted its own COVID-19 workplace standard that applies to nearly all industries in the Commonwealth.

OSHA EMERGENCY TEMPORARY STANDARD COVERAGE AND REQUIREMENTS

The new federal standard applies to employees in hospitals, nursing homes, and assisted living facilities. It also covers emergency responders, home healthcare workers, and employees in ambulatory care facilities where suspected or confirmed COVID-19 patients are treated. Notably, the standard does not apply to:

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

OSHA has developed a flow chart to aid employers in determining whether the new standard applies to a specific workplace. The flow chart may be found [here](#).

The ETS places a number of requirements and restrictions upon covered health care employers, including:

- **Adoption of a COVID-19 plan** – Each covered workplace must develop and implement a COVID-19 plan and such plan should be in writing if the employer has at least 10 employees. Among other requirements, the plan should include policies and procedures to minimize COVID-19 transmission to employees and a workplace-specific hazard assessment.

- **Employee health screening and medical management** –
 - Employers must screen each employee before each workday and shift (for example, by asking employees to self-monitor);
 - Employer-required testing should be provided at no cost to the employee (Note: employers are not required to conduct screening testing);
 - Each employee must be required to promptly notify the employer when the employee is COVID-19 positive, suspected of having COVID-19, or experiencing certain symptoms;
 - Employers must notify certain employees within 24 hours when a person who has been in the workplace is COVID-19 positive;
 - Employers must follow specific requirements for removing workers from the workplace;
 - Employers must make decisions on returning employees to work in accordance with guidance from a licensed healthcare provider or specified CDC guidance; and
 - Employers must continue to pay removed employees in most circumstances.
- **Patient screening and management requirements for employers** – Employers must ensure screening of non-employees and must limit and monitor points of entry to settings where direct patient care is provided.
- **Leave for vaccination** – Employees must be granted reasonable time and paid leave for vaccinations and vaccine side effects.
- **Training** – Each employee must be trained in the appropriate language and literacy level for him or her to understand COVID-19 transmission, mitigation, and policies. Employees must be given additional training as appropriate.
- **Standard and Transmission-Based Precautions** – Policies and procedures must comply with Standard and Transmission-Based Precautions in accordance with CDC guidelines.
- **Use of Personal Protective Equipment (PPE)** – Employers must provide face masks and ensure employees properly use them when indoors or in vehicles with others for work. Provide and ensure proper use of respirators and other PPE for exposure to those having, or suspected of having, COVID-19 and for aerosol-generating procedures on such individuals.
- **Aerosol-generating procedures on persons with suspected or confirmed COVID-19** – Aerosol-generating procedures occur only in the presence of essential personnel in airborne isolation rooms (if available), and equipment must be cleaned and disinfected afterwards.
- **Physical distancing** – Employees must be separated from all other people by at least 6 feet when indoors.
- **Physical barriers** – Cleanable or disposable solid barriers should be installed at fixed work locations in non-patient care areas where an employee is not separated from other people by at least 6 feet.
- **Cleaning and disinfection practices** – CDC compliant standard practices for cleaning and disinfection of surfaces and equipment must be used for 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 and hand-washing stations or compliant sanitizers must be provided.
- **Ventilation** – HVAC must be used in accordance with manufacturer's instructions and be rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it. Any airborne infection isolation rooms be kept in accordance with criteria and be cleaned and maintained.
- **Notices and Anti-Retaliation** – Employees must be informed of their rights under the ETS and cannot be discriminated against for exercising those rights.

- **Recordkeeping** – Employers with more than 10 employees must 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.
- **Reporting COVID-19 fatalities and hospitalizations to OSHA** – Employers must report to OSHA each work-related COVID-19 fatality within 8 hours of learning about the fatality, and each work-related COVID-19 in-patient hospitalization within 24 hours of learning about the in-patient hospitalization.
- **Mini respiratory protection program (29 CFR 1910.504)** – Under some circumstances detailed in the ETS, N-95 training and use is required for certain employees.

EFFECTIVE DATE FOR THE ETS

The ETS becomes effective when it is published in the Federal Register. This publication has not yet occurred, but it is expected soon. Once publication occurs, employers must ensure compliance in the following weeks. Training, physical barrier, and HVAC requirements become effective 30 days after the ETS publication date. All other requirements become effective 14 days from publication. OSHA emergency temporary standards are effective until superseded by a permanent standard, which must happen within six months of the ETS publication.

The timeline is more complicated for Virginia and other states that operate their own OSHA-approved safety and health plans. Those states are not required to maintain standards that are identical to, or at least as effective as, the standards set by OSHA. Within 30 days of publication of the federal ETS, these states must amend their current standards to comply with the new ETS.

ACTION FOR HEALTH CARE EMPLOYERS

Employers should carefully review the new federal ETS and be prepared to comply with many of its requirements in the next two weeks. The U.S. Department of Labor has created an [ETS page](#) that includes the full text of the standard, FAQs, and other helpful resources for healthcare employers.

Virginia employers should continue abiding by Virginia's current COVID-19 standards in the [final permanent standard](#) (FPS) while also preparing to comply with many of the more protective requirements found in the new federal ETS that will be adopted in Virginia in the coming weeks. This includes providing paid leave for employees to be vaccinated and for any vaccine-related side effects.

If you have questions or need assistance regarding compliance with the ETS or related state workplace standards, and other employment laws, please contact a member of Hancock Daniel's [Labor & Employment](#) team. Additional information about Hancock, Daniel & Johnson, P.C. is available on the firm's website, www.hancockdaniel.com.

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