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OSHA Issues Emergency Temporary Standard for Healthcare Workers and Updated Guidance for Other Industries

On June 10, 2021 the U.S. Occupational Safety and Health Administration (“OSHA”) announced it will issue an emergency temporary standard (“ETS”) to protect healthcare workers from the coronavirus. In addition to the healthcare-focused ETS, OSHA is issuing long-awaited updated guidance for workplaces on all other industries.

OSHA’s Healthcare-Focused ETS

The new healthcare ETS applies to “all settings where any employee provides healthcare services or healthcare support services.” For purposes of the ETS, the term “healthcare services” is defined as “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.” The term “healthcare support services” means “services that facilitate the provision of healthcare services,” including “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.”

The ETS does not apply to the following settings:

1. Provision of first aid by an employee who is not a licensed healthcare provider;
2. Dispensing of prescriptions by pharmacists in retail settings;
3. Non-hospital ambulatory care settings where all non-employees are screened before entry and people with suspected or confirmed COVID-19 are not permitted to enter;
4. 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;
5. Home healthcare settings where all employees are fully vaccinated and all non-employees are screened before entry and people with suspected or confirmed COVID-19 are not present;

6. Healthcare support services not performed in a healthcare setting (e.g., off-site laundry, off-site medical billing); and
7. Telehealth services performed outside of a setting where direct patient care occurs.

For employers who are covered by the ETS, the following steps are required:

1. Develop and implement a COVID-19 plan, which must be written if the employer has more than 10 employees;
2. Designate one or more workplace COVID-19 safety coordinators to implement and monitor the COVID-19 plan;
3. Conduct a workplace-specific hazard assessment related to COVID-19;
4. In settings where direct patient care is provided, implement patient screening and management;
5. Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with the CDC's "Guidelines for Isolation Precautions";
6. Provide and ensure employees wear appropriate personal protective equipment;
7. Ensure certain requirements are met when an aerosol-generating procedure is performed on a person with suspected or confirmed COVID-19;
8. Ensure physical distancing when indoors if possible;
9. If physical distancing is not possible, install physical barriers at each fixed work location outside of direct patient care areas;
10. Follow standard practices for cleaning and disinfection;
11. Ensure appropriate ventilation in buildings or structures owned or controlled by the employer;
12. Perform health screening and medical management of each employee before each work day and each shift;
13. Support COVID-19 vaccination for each employee by providing reasonable time and paid leave;
14. Ensure that each employee receives training on COVID-19 and applicable policies and procedures in a language and at a literacy level the employee understands;
15. Inform each employee that they are protected from retaliation and discrimination for exercising their right to protections required by the ETS and for engaging in actions that are required by the ETS;
16. Implement all the ETS's requirements at no cost to employees, except for any employee self-monitoring before reporting to work; and
17. Establish and maintain a COVID-19 log to record each instance in which an employee is COVID-19 positive, irrespective of whether the instance is connected to exposure to COVID-19 in the workplace.

The ETS further requires employers to seek input and involvement of non-managerial employees and their representatives in the hazard assessment and the development of a COVID-19 plan.

OSHA has stated it is essential that employers ensure the requirements of the ETS are implemented as quickly as possible. To that end, OSHA set a compliance deadline of 14 days after the ETS is published in the Federal Register for all obligations except physical barriers, ventilation and training, which must be implemented within 30 days after such publication.

The full text of the ETS is available [here](#), a fact sheet is available [here](#), and FAQs may be accessed [here](#).

OSHA's Updated Guidance Applicable to All Other Industries

OSHA also has issued updated guidance for all other workplaces where the healthcare-focused ETS does not apply. This guidance is intended to help employers and workers identify COVID-19 exposure risks for workers who are unvaccinated or otherwise at risk, and to help them take appropriate steps to prevent exposure and infection.

According to the updated guidance, most employers no longer need to take steps to protect fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure unless otherwise required by applicable law, which is consistent with the CDC's recent recommendations for fully vaccinated people. The updated guidance, therefore, focuses on protecting unvaccinated or otherwise at-risk workers in their workplaces or well-defined portions of workplaces. At-risk workers may include those who have undergone a prior transplant or are immunocompromised due to prolonged use of corticosteroids or other immune-weakening medications that affect the individual's ability to have a full immune response to vaccination.

The updated guidance makes the following familiar recommendations for unvaccinated and other "at-risk" workers:

- Identify opportunities to get vaccinated, including asking about opportunities for paid leave to get vaccinated and recover from any side effects.
- Properly wear a face mask.
- Socially distance.
- Participate in any workplace training.
- Practice good personal hygiene and frequent hand washing.

The updated guidance also recommends that employers take the following steps to protect unvaccinated or otherwise at-risk workers:

- Grant paid time off for employees to get vaccinated.
- Instruct any workers who are infected, unvaccinated workers who have had close contact with someone who tested positive for SARS-CoV-2, and all workers with COVID-19 symptoms to stay home from work to prevent or reduce the risk of transmission of the virus that causes COVID-19.
- Implement physical distancing for unvaccinated and otherwise at-risk workers in all communal work areas.
- Limit the number of unvaccinated or otherwise at-risk workers in one place at any given time.
- Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks, unless their work task requires a respirator or other PPE.
- Educate and train workers on the employer's COVID-19 policies and procedures using accessible formats and in a language they understand.
- Suggest that unvaccinated customers, visitors, or guests wear face coverings, especially in public-facing workplaces such as retail establishments, if there are unvaccinated or otherwise at-risk workers in the workplace who are likely to interact with these customers, visitors, or guests.
- Maintain ventilation systems to reduce the concentration of viral particles in indoor air.
- Perform routine cleaning and disinfection.
- Record and report COVID-19 infections and deaths.
- Implement protections from retaliation and set up an anonymous process for workers to voice concerns about COVID-19-related hazards.
- Follow other applicable mandatory OSHA standards.

The updated guidance also sets forth additional recommendations for “higher-risk workplaces,” which include manufacturing, meat and poultry processing, high-volume retail and grocery, and seafood processing, and other higher-risk workplaces where there are unvaccinated or otherwise at-risk workers who (i) are in close or prolonged contact with one another, (ii) may be exposed to respiratory droplets in the air or from contact with contaminated surfaces or objects, (iii) share employer-provided transportation, (iv) have frequent contact with other unvaccinated or other at-risk workers in community settings where there is elevated community transmission, or (v) live in communal housing or onboard vessels with other unvaccinated or otherwise at-risk individuals.

For these higher-risk workplaces, OSHA makes the following recommendations, which are in addition to the general precautions listed above, including isolation of infected or possibly infected workers:

- Stagger breaks and arrival/departure times to avoid groups of unvaccinated or otherwise at-risk workers congregating during breaks, in parking areas, in locker rooms and near time clocks;
- Provide visual cues, such as signs and floor markers as a reminder to maintain physical distancing.
- Implement tailored strategies to improve ventilation.
- Suggest masks for unvaccinated (or unknown-status) customers and visitors.
- Maintain physical barriers between employees, and between employees and customers, where applicable, particularly in manufacturing and retail workplaces.
- Consider physical distancing and use of barriers for those working on food processing or assembly lines.
- In retail workplaces, move the electronic payment terminal/credit card reader farther away, and shift stocking activities to off-peak or after hours when possible.
- For workers who travel in employer-provided buses and vans, limit the number of workers in one vehicle to the extent feasible and ensure workers who share a vehicle wear appropriate face coverings.

While much of OSHA's updated guidance for other industries provides recommendations, as opposed to legal requirements, we recommend that, as a best practice, employers should follow OSHA's recommendations where possible.

If you need any further guidance or information on OSHA's healthcare-focused emergency temporary standards or updated guidance for other industries, please contact any of the attorney members of Kutak Rock's [OSHA Compliance & Workplace Safety Group](#) or [Employment Law Group](#). You may also visit us at www.KutakRock.com.

