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OSHA Releases COVID-19 Emergency Standard for Healthcare Employees

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Posted By: Doris E. Brosnan

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After determining that U.S. workers were the most likely to have exposure to COVID-19 in healthcare workplaces, the Occupational Safety and Health Administration (OSHA) released its COVID-19 Emergency Temporary Standard ("ETS") on June 10, 2021. The ETS was officially published in the Federal Register on June 21, 2021. The ETS applies to workers who provide healthcare services and healthcare support services, including doctors, nurses, emergency medical personnel, oral health professionals, and employees who provide services in patient admission, food service, equipment and facility maintenance, housekeeping, medical waste handling, and medical equipment cleaning and reprocessing.

The ETS exempts from coverage the following:

- Pharmacists in retail settings.
- Healthcare support services, such as billing and coding services, laundry, or medical waste handling, that take place in off-site, non-healthcare settings.
- Employees working in outpatient, non-hospital settings, if non-employees are screened for COVID-19 and not permitted to enter if they are suspected or confirmed to have COVID-19.
- Employees working in home healthcare settings or hospital-based outpatient clinics, if all employees are fully vaccinated (other than those exempt from vaccination due to disabilities or religious exemptions), and if non-employees are screened for COVID-19 and not permitted to enter if they are suspected or confirmed to have COVID-19.

According to the ETS, employers are required to comply with most of the provisions of the ETS by July 6, 2021. Requirements relating to physical barriers, ventilation, and training must be accomplished by July 21, 2021. OSHA said it will avoid citing employers who may miss these deadlines if they can show they are trying in good faith to comply with the new standard.

Employer Requirements
The ETS requires healthcare employers to do the following:

- Develop and implement a COVID-19 plan for each workplace. Employers with multiple workplaces that are similar may be developed together, as long as the plan contains site-specific information. For employers with more than 10 employees, the plan must be in writing.
- Maintain a COVID-19 log to record all employee COVID-19 infections, regardless of connection to workplace, as well as report to OSHA each work-related COVID-19 fatality within 8 hours of learning of the fatality and each in-patient hospitalization for work-related COVID-19 within 24 hours of learning of the in-patient hospitalization.
- Designate one or more COVID-19 "safety coordinators" who must be knowledgeable in infection control principles and practices in the workplace.
- Conduct a hazard assessment of the workplace to identify potential COVID-19 hazards.
- Follow the Center for Disease Control (CDC) "COVID-19 Infection Prevention and Control Recommendations" and "Guidelines for Environmental Infection Control"
- Give employees paid time off to receive the COVID-19 vaccine and recover from its side effects.
- Screen employees for COVID-19 for each shift. This can be accomplished through employees self-monitoring for COVID-19 symptoms and exposures.
- Screen patients, clients, and visitors for COVID-19 symptoms.
- Limit and monitor points of entry to settings where direct care is provided.
- Require employees to wear face masks when they are indoors, and provide employees with more effective personal protective equipment (PPE) where needed, such as when they are caring for patients known to have COVID-19.
- Keep people at least 6 feet apart when indoors, or install cleanable or disposable barriers at each fixed work location in non-patient care areas where workers cannot be kept 6 feet from others.
- Ensure that HVAC systems are used in accordance with manufacturer's specifications and that air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher.
- Ensure that employees receive training so they understand COVID-19 transmission and situations in the workplace that could result in infection.

Employee Quarantine and Paid Leave
The ETS also requires employers to remove certain employees from the workplace for quarantine and provide paid leave under certain circumstances. An employer is required to remove a worker when the employer knows that the employee:

- Is COVID-19 positive, meaning that the worker was confirmed positive for or was diagnosed by a licensed healthcare provider with COVID-19; or
- Has been told by a healthcare provider that they are suspected to have COVID-19; or
- Is experiencing recent loss of taste and/or smell, with no other explanation; or is experiencing both fever of more than 100.4 degrees and has a new "unexplained cough" associated with shortness of breath; or
- Is required to be notified by the employer of close contact in the workplace to a person who is COVID-19 positive, unless the worker has been fully vaccinated against COVID-19 (i.e., 2 weeks or more following the final dose), or had COVID-19 and recovered within the past 3 months, and the worker does not experience the symptoms listed in the previous bullet.

According to OSHA, if an employer removes an employee from the workplace for quarantine, the employer must not allow the employee to return to the workplace until the employee meets return to work criteria based on guidance from a licensed healthcare provider or applicable guidance from the CDC. Moreover, employers must also follow state or local public health authorities who may require a longer period of removal.

If the employer must remove an employee from the workplace, employers with between 11 and 499 employees must pay the employee's regular pay, up to $1,400 per week, for the first two weeks that the employee is removed. Beginning the third week, if the employee's removal continues for that long, the employer must pay two-thirds of the same regular pay the employee would have received if working, up to $200 per day. Employers with 500 or more employees must pay the employee's salary up to $1,400 per week during the entire period of removal. If the employee receives compensation for lost earnings from any other source, such as employer-paid sick leave, then the employer may reduce the amount paid to the removed employee by however much the employee receives from the outside source.

Retaliation Protection
The ETS also provides that employers may not retaliate against any worker for exercising their rights under the ETS or engaging in actions required by the ETS. Employees must also be informed of their rights under the ETS.

We Are Here to Help
Healthcare employers should take immediate action to prepare to comply with the ETS, including its July 6, 2021 and July 21, 2021 compliance deadlines.

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