

OSHA's New Emergency Temporary Standard to

COVID-19 Response Resource Center: Timely Counsel for your Business

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The Department of Labor's Occupational Safety and Health Administration (OSHA) recently issued a COVID-19 Emergency Temporary Standard (ETS) for the healthcare industry. The new standard focuses on protecting healthcare workers who face the greatest coronavirus risks – those working in healthcare settings where suspected or confirmed coronavirus patients are treated.

Employers subject to the ETS should review the new standard and immediately begin taking steps to comply.

Who Must Comply?

The healthcare ETS applies to settings where any employee provides healthcare services or healthcare support services, including:

- Hospitals
- Nursing homes
- Assisted living facilities
- Home healthcare
- Emergency responders
- Ambulatory care settings where suspected or confirmed coronavirus patients are treated

The standard provides some exceptions, including for certain healthcare settings where COVID-19 screening measures are in place. For example, the standard does *not* apply to non-hospital ambulatory care settings where all non-employees are screened prior to entry and individuals with suspected or confirmed COVID-19 are not permitted to enter.

Additionally, for healthcare settings embedded in non-healthcare settings, the ETS applies only to the embedded healthcare setting (and not the rest of the physical location).

What Does Compliance Entail?

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Non-exempt employers must comply with several new requirements to protect their employees from coronavirus. Key areas of compliance include:

- COVID-19 plan
- Patient screening and management
- Standard and Transmission-based precautions
- Personal protective equipment
- Aerosol-generating procedures on persons with suspected or confirmed COVID-19
- Physical distancing
- Physical barriers
- Cleaning and disinfection
- Ventilation
- Health screening and medical management of employees
- Vaccination
- Training
- Anti-retaliation
- Requirements to be implemented at no cost to employees
- Record-keeping
- Reporting COVID-19 fatalities and hospitalizations to OSHA
- Mini-respiratory program

The healthcare ETS imposes new requirements in each of these compliance areas.

For example, non-exempt employers must develop and implement a COVID-19 plan for their workplace. Among other things, the plan must designate a workplace safety coordinator (or coordinators) knowledgeable in infection control principles and practices, and who has authority to implement, monitor, and ensure compliance with the plan. Employers also must engage employees in the development of the plan, and must document the policies and procedures they have implemented to comply with the requirements in each compliance area.

Considerations for Vaccinated Employees

Fully vaccinated workers are exempt from the standard's masking, distancing, and barrier requirements when in well-defined areas where there is no reasonable expectation that any person will be present with suspected or confirmed coronavirus. OSHA has emphasized that "fully

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vaccinated" means two weeks or more following the final dose of a COVID-19 vaccine.

Compliance Timeline

The ETS is effective immediately upon publication in the *Federal Register*. Employers must comply with most provisions within 14 days and with provisions related to physical barriers, ventilation, and training within 30 days. As of the publication of this alert, the ETS had not yet been published in the *Federal Register*. We expect publication in the coming days, although we cannot be sure of the exact timing.

OSHA believes compliance with the requirements of the ETS within the specified dates will be achievable under most circumstances, given that many employers are likely already in compliance with at least some of the provisions. However, each covered employer should compare its current policies against the requirements of the healthcare ETS to ensure full and timely compliance with the new rules.

Non-Healthcare Employers

OSHA announced the new healthcare standard alongside a revised general industry guidance, discussed in this Brooks Pierce alert.

This Alert provides an update on a legal development. It is not intended as legal advice. For further information regarding OSHA's new healthcare ETS, review OSHA's collection of resources here, including OSHA's collected FAQs here. For assistance evaluating how the new standard impacts your workplace, please reach out to a member of the Brooks Pierce Healthcare or Labor & Employment Teams.

Tags: Occupational Safety and Health Administration (OSHA), Vaccine