

OSHA Issues COVID-19 Workplace Safety Rule for Healthcare Employers

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by Aaron Goldstein

On June 10, 2021, the Occupational Safety and Health Administration (“OSHA”) released the first nationwide workplace safety rule in response to the COVID-19 pandemic. OSHA’s guidance is only binding on healthcare employers. OSHA reported that it will issue supplemental voluntary guidance for other industries.

The emergency temporary standard (“ETS”) that will take effect once it is published to the Federal Register. The standard requires employers to develop and implement effective COVID-19 plans. Specifically, it mandates the following:

1. **COVID-19 Plan.** All healthcare employers must develop and implement a COVID-19 plan. Employers with more than ten employees must prepare a written plan. All plans must include a designated safety coordinator with authority to ensure plan compliance including a workplace-specific hazard assessment. Non-managerial employees must be involved in preparation of the plan and hazard assessment’s development and implementation. Employers must also develop policies and procedures to minimize the risk of transmission of COVID-19 to employees.
2. **Patient Screening and Management.** Employers must limit and monitor points of entry to settings where direct patient care is provided; screen and triage patients, clients, and other visitors and non-employees; and implement patient management strategies.
3. **Standard and Transmission-Based Precautions.** Employers must develop and implement policies and procedures to adhere to Standard and Transmission-Based precautions based on CDC guidelines.
4. **Personal Protective Equipment (PPE).** Employers must provide and ensure that each employee wears a facemask when indoors and when occupying a vehicle with other people for work purposes; provide and ensure that employees use respirators and other PPE when exposed to people with suspected or confirmed COVID-19, and for aerosol-generating procedures on a person with suspected or confirmed COVID-19.
5. **Aerosol-Generating Procedures on People Suspected or Confirmed to Have COVID-19.** When completing aerosol-generating procedures on a person with suspected or confirmed COVID-19, employers must limit employees present to only those essential; perform procedures in an airborne infection isolation room, if

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available; and clean and disinfect surfaces and equipment after the procedure is completed.

6. **Physical Distancing.** Employers must keep people at least six feet apart when indoors.
7. **Physical Barriers.** Employers must install cleanable or disposable solid barriers at each fixed work location in non-patient care areas where employees are not separated by at least six feet.
8. **Cleaning and Disinfection.** Employers must follow standard practices for cleaning and disinfecting surfaces and equipment in accordance with CDC guidelines in patient areas, resident rooms, and for medical devices and equipment. In all other areas, employers must clean high-touch surfaces and equipment at least once a day and provide an alcohol-based hand sanitizer that is at least 60% alcohol, or provide readily accessible handwashing facilities.
9. **Ventilation.** Employers must ensure that their existing HVAC systems are used in accordance with the manufacturer's instructions and design specifications for the systems and that air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it.
10. **Health Screening and Medical Management.** Employers must:
 - (a) Screen employees before each workday and shift;
 - (b) Require each employee to promptly notify the employer when they are experiencing certain symptoms of COVID-19, are suspected of having COVID-19, or test positive for COVID-19;
 - (c) Notify certain employees within 24 hours when a person who has been in the workplace tests positive for COVID-19;
 - (d) Follow requirements for removing employees from the workplace;
 - (e) Employers with more than ten employees must provide medical removal protection benefits in accordance with the ETS to workers who must isolate or quarantine.
11. **Vaccination.** Provide reasonable time and paid leave for vaccinations and vaccine side effects.
12. **Training.** Employers must ensure that all employees receive training to understand COVID-19 transmission, tasks and situations in the workplace that could result in viral transmission, as well as relevant policies and procedures.
13. **Anti-Retaliation.** Employers must inform employees of their rights to the protections required by the standard, including its anti-retaliation measures. Employers may not discharge or otherwise discriminate against employees for exercising their rights under the ETS or for engaging in actions required by the standard.
14. **No Cost to Employees.** All COVID-19 safety measures must be implemented at no cost to employees.
15. **Recordkeeping.** Employers with more than ten employees must establish a COVID-19 log of all employee COVID-19 infections, regardless of occupational exposure, and must follow requirements for making records available to employees and representatives.
16. **Reporting.** Employers must report work-related fatalities and inpatient hospitalizations to OSHA.

Many question the necessity of the ETS at the current stage of the pandemic. Generally speaking, OSHA's right to implement ETSs is limited to circumstances where employee are in "grave danger" and where the ETS is "necessary." Given the success of the United States' vaccination program and movement towards the relaxation of COVID-19

safety precautions, it is possible that the ETS will be nullified if challenged in court.

Overall, the ETS is consistent with steps that healthcare employers have already taken to ensure workplace safety. That said, employers should revisit their COVID-19 plans and confirm that they are reduced to writing, include paid vaccination leave, and that non-managerial employees participated in their preparation and rollout. Employers should also confirm that their COVID-19 plans continue to comply with other state and local workplace safety rules and regulations.