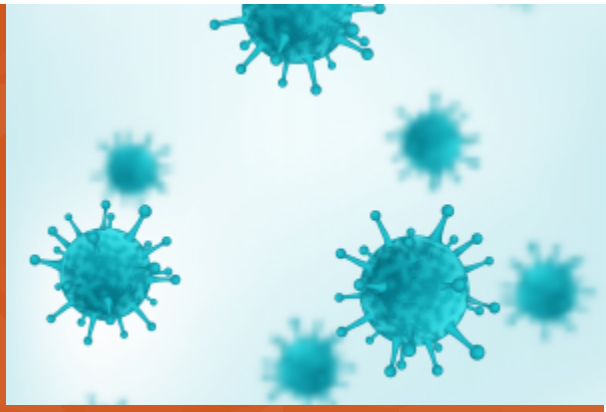
COVID-19 Alert: Emergency Temporary Standard

OSHA Issues Emergency Temporary Standard for Healthcare Settings

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On June 10, 2021, the Occupational Safety and Health Administration ("OSHA") issued an Emergency Temporary Standard ("ETS") directed at protecting frontline healthcare workers for the duration of the COVID-19 pandemic. As part of the Biden Administration's directives, OSHA determined that its current standards and regulations, and OSHA's General Duty Clause, were inadequate to protect workers in the healthcare sector, and issued this ETS. OSHA additionally updated its non-binding guidance for all other industries, which still remain subject only to OSHA's regular regulations, standards, and General Duty Clause.

The "New" Requirements

The main section of the ETS requires employers to develop and implement effective COVID-19 plans, the control strategies of which should be very familiar to most employers at this point in the pandemic. However, now OSHA will require employers to use a number of familiar controls in a layered approach in order to protect employees. The key requirements of the ETS are:

- **COVID-19 Plan.** OSHA will now require every qualifying employer to develop and implement a COVID-19 plan for each workplace site. If the employer has more than 10 employees, the plan must be in writing. The Plan must be developed in conjunction with management and non-management and must be clearly communicated to employees.
- **Patient screening and management.** Employers must limit points of entry in direct care patient settings, screen and triage all visitors, clients, patients, and others entering the setting, and encourage telehealth services when appropriate.
- **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.
- **PPE.** Employers must provide facemasks to be worn by each employee when indoors or when sharing a vehicle for work purposes, with some exceptions.
- **Aerosol-generating procedures on a person with suspected or confirmed COVID-19.** Employers must limit employees present for the procedure to only those essential, and perform procedures in an airborne infection isolation room, if available; and clean and disinfect surfaces and equipment after the procedure is completed.
- **Physical distancing.** Employers must keep people at least 6 feet apart when indoors, unless not feasible (such as for hands-on medical care).
- **Physical barriers.** Employers must install cleanable or disposable barriers installed at fixed work locations in non-patient areas where social distancing is not possible.

- **Cleaning and disinfection.** Employers must engage in standard practices for cleaning and disinfection for patient care areas, resident rooms, and medical devices and equipment, and in all other high-touch areas, in accordance with CDC guidelines.
- **Ventilation.** Employers must ensure that all HVAC systems are used in accordance with the manufacturer's instructions, and that all air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, or the highest compatible with the system.
- **Health screening and medical management.** Employers must screen each employee daily, which may be done through self-monitoring by the employee. Each employee must report COVID-19 confirmed and suspected illness, or symptoms to the employer. The Employer must also notify all employees who were not wearing respirators and/or required PPE of any COVID-19 exposure at the workplace.
- **Vaccination.** Employers must provide support and paid leave for employees to receive a COVID-19 vaccination, and to recover from any side effects.
- **Training.** Employers must train and educate employees on COVID-19 transmittal, hygiene, and other prevention policies and procedures.
- **Anti-retaliation.** Employers must inform employees of their rights to the protections required by the ETS, and employers must not discharge or discriminate against employees for exercising their rights under the ETS or for engaging in actions required by the ETS.
- **Recordkeeping.** Employers with more than 10 employees must establish a COVID-19 log of all employee COVID-19 infections and follow requirements for making records available to employees and union representatives.
- **Reporting requirements.** Employers must comply with OSHA's reporting requirements for work-related COVID-19 fatalities and in-patient hospitalizations.

Who is Subject to the ETS?

The ETS applies to workplaces (or portions of workplaces) that provide healthcare services or healthcare support services that meet one or more of the following:

- It is not a well-defined hospital ambulatory care setting;
- All employees are not fully vaccinated;
- All non-employees are not screened prior to entry;
- People with suspected or confirmed COVID-19 are likely to be present.

The ETS may also apply in a home healthcare setting that does not meet the last three of the above criteria. The ETS will not apply to workplaces such as retail pharmacies, and off-site healthcare support services, such as billing offices, and laundry facilities. Further, for situations in which healthcare services are imbedded in non-healthcare settings, such as a medical clinic inside a manufacturing plant, the ETS will apply only to that healthcare portion that qualifies under the above criteria.

In determining whether the workplace has fully vaccinated employees, OSHA noted that the ETS is not intended to exclude non-vaccinated employees who are unable to be vaccinated due to medical or religious exemptions under anti-discrimination laws. If the employer grants a reasonable accommodation to an employee meeting a medical or religious exemption that does not put the employee at risk of contracting COVID-19 (e.g., telework, working in isolation), the ETS will not apply to those exempted employees.

What About Everyone Else?

Unless the workplace meets the criteria set above, all other workplaces are not subject to the ETS. Instead, they will continue to be subject to OSHA's regular regulations, standards, and General Duty Clause. OSHA did update its non-binding guidance (the "Guidance"), however, to address the updated recommendations from the Centers for Disease Control ("CDC").

OSHA acknowledges that most employers no longer need to take steps to protect employees from COVID-19 when its employees are all vaccinated. The Guidance, instead, focuses on how employers can continue to protect *unvaccinated or at-risk employees* from COVID-19. It encourages employers to continue offering alternative working arrangements to these employees, such as telework or flexible schedules when possible, and to continue other prevention programs, such as enhanced cleaning protocols, social distancing, maintaining ventilation systems, and providing face coverings. It also encourages unvaccinated or at-risk employees to continue wearing face coverings, social distance when possible, and receive a vaccine. OSHA encourages employers to provide paid time off to employees to receive the vaccine, and to continue to separate and quarantine employees who are in close contact with someone who tests positive or who exhibits symptoms of COVID-19.

For most employers, not much will change under OSHA's new ETS – except now there may be enforcement actions against those who fail to comply. The ETS is set to take effect immediately upon publication in the Federal Register, but employers will have 14 days from that date to come into compliance with most of the requirements.

Morse is focused on assisting our clients navigate and understand the changes under OSHA's new ETS. Please contact Matthew Mitchell should you have questions concerning this subject, or any other COVID-19 response matters.

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