

OSHA Issues Emergency Temporary Standard Rule for Healthcare Employers

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On June 10, 2021, the U.S. Labor Department's Occupational Safety and Health Administration (OSHA) released a nationwide emergency COVID-19 [workplace safety rule](#), accompanied by a 916-page explanatory [preamble](#). President Biden had called for this rule in his January 2021 executive order. Although temporary in nature, the Emergency Temporary Standard (ETS) rule imposes a wide array of requirements on employers in the healthcare industry, aimed at protecting their employees against COVID-19 while on the job.

To whom does the ETS rule apply?

The ETS rule is narrow in its application, covering only those employers that provide direct patient care and healthcare support services, including hospitals, assisted living facilities, and patient transport. The rule does not apply to healthcare support services performed in non-healthcare settings (e.g., off-site laundry), nor does it apply to retail pharmacies, or non-hospital ambulatory clinics, provided there is screening of all non-employees for COVID-19 prior to entry to those clinics and those individuals with suspected or confirmed cases are barred from entry.

This exception also extends to well-defined hospital ambulatory or home health care settings, if all employees are fully vaccinated and the same screening and entry restrictions are followed. The preamble describes "well-defined" areas as those distinct from the rest of the hospital or other care settings, such as administrative offices, employee break rooms, or laboratories. The Secretary of Labor specifically clarified that the ETS rule does not apply to sectors outside of healthcare, even those with histories of COVID-19 outbreaks, such as the meatpacking industry, due to progress being made in the vaccine rollout and the resulting relaxed guidelines for vaccinated individuals.

What does the ETS rule require?

Each employer covered by the ETS rule must develop and implement a COVID-19 plan with participation from non-managerial workers. For employers covered by the ETS rule with more than 10 employees, they must maintain a written COVID-19 plan. That plan must designate a safety coordinator to oversee its implementation. The ETS rule also requires covered healthcare employers to take the following protective actions:

- Providing personal protective equipment (PPE) for employees when exposed to patients with suspected or confirmed COVID-19 infection;
- Requiring masks and respirators be worn;
- Mandatory COVID-19 screenings at entry points;
- Six feet distancing between people when indoors;
- Cleaning and disinfecting facilities;
- Paid time off for employees to get vaccinated or recover from vaccines' side effects;
- Physical barriers at fixed work locations where each employee cannot be distanced from others;
- Effective ventilation systems meeting the minimum filter requirements; and
- Providing employees with training on topics specified in the ETS rule.

The rule also allows for certain exceptions, such that fully vaccinated employees do not have to follow masking, distancing, and barrier

requirements when they are in well-defined areas with no reasonable expectation that a person with suspected or confirmed COVID-19 will be present.

How long do the covered employers have to get into compliance?

The Office of Federal Register has officially published the ETS rule in the Federal Register as of June 21, 2021. From the date of publication, the countdown for a 14-day requirement for covered employers to come into compliance begins, bringing the deadline to July 6, 2021. Note that the portions of the rule that mandate worker training or physical changes to the work areas (i.e., erecting barriers and reinforcing ventilation) have extended compliance deadlines. Employers have until July 21, 2021 to comply with those requirements. On the other hand, employers must comply with the mini respiratory protection program by the day of publication. Under the federal Occupational Safety and Health Act of 1970, because the ETS rule is an emergency and temporary in nature, it is limited to last for six months. During which time, OSHA must establish a permanent standard through the normal rulemaking process.

Healthcare employers covered under the ETS rule should review the requirements to ensure they come into full compliance by the deadlines. They should also be on the lookout for the permanent standard that OSHA might release in the future. While OSHA has stated that it will use its enforcement discretion to avoid citing employers so long as they are making good-faith efforts to comply, the ETS rule and compliance with the rule are likely to receive significant attention from employees and the public.

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