

OSHA ISSUES EMERGENCY COVID-19 STANDARDS FOR THE HEALTH CARE INDUSTRY

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OSHA's order seeks to protect health care workers, while providing paid leave under certain circumstances.

On June 10, 2021, OSHA issued an Emergency Temporary Standard (ETS) for health care workers related to COVID-19.¹ It became effective on July 6, 2021,² and requires covered employers (any health care business affecting commerce that has employees) to develop and implement a COVID-19 plan for each workplace, including appointing a safety coordinator, conducting a hazard assessment, seeking input from non-management employees and their representatives (unions), and, for employers with more than 10 employees, producing a written plan for the protective measures to be taken, communicating the plan to its employees and implementing the plan. Additionally, employers with more than 10 employees have an obligation to pay employees they remove from the workplace due to contracting COVID, having symptoms of COVID or exposure to it; and employers must allow employees to be vaccinated against COVID during work hours and pay them for the time they are away from work to be vaccinated and for any work missed because of an adverse reaction to the vaccination.

Organizations covered by the ETS are:

1. Businesses providing health care services:

- Hospitals;
- Nursing homes;
- Assisted living facilities;

- Home health and hospice care;
- Ambulatory care facilities;
- Emergency medical response;
- Patient transport; and
- Autopsies.

2. Businesses providing health care support services:

- patient intake/admission;
- patient food services;
- equipment and facility maintenance;
- housekeeping services;
- health care laundry services;
- medical waste handling services;
- medical equipment; and
- cleaning/reprocessing services.

Organizations not covered by the ETS include:

- the provision of first aid by an employee who is not a licensed health care provider;
- pharmacists in retail settings;
- non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;
- health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing).

Paid Leave Required:

Paid leave is mandated by the ETS for an employer with more than 10 employees that removes an employee from work for the following medical reasons:

- the employee has COVID;
- the employee has been told by a health care provider that he/she is suspected to have COVID;
- the employee has a recent loss of taste and/or smell with no other explanation; or – the employee has a temperature in excess of 100.4 F and a new, unexplained cough associated with a shortness of breath.

Mandated Pay and Benefits for Removed Employees:

- Employers with 10 or fewer employees companywide are not required to pay anything.
- Employers with fewer than 500 employees must pay employees' regular pay up to \$1,400 a week for the first two weeks and then 2/3 of the employees' regular pay up to \$200 a day. An employer may be eligible for refundable tax credits under the American Rescue Plan if it provided paid time off for qualified sick and family leave due to COVID-related reasons from April 1, 2021 through September 30, 2021.
- Employers with 500 or more employees are required to pay employees' salaries up to \$1,400 a week during the entire period until the employee meets the return-to-work criteria.
- The employer's payments above may be reduced by the amount of compensation the removed employee receives from any other source, such as paid sick leave or administrative leave for earnings lost during the removal or any additional source of income the employee receives that is made possible by virtue of the employee's removal.
- During the removal period, employers must continue to provide employer- sponsored benefits (e.g., health insurance) to employees, provided such benefits are ones the employee would normally be entitled to receive. Employers should check their benefit plans to make sure it will be provided.
- No retaliation: When an employee returns to work after a COVID-19-related removal, the employee must not suffer any adverse action as a result of that removal and must maintain all employee rights and benefits, including the employee's right to his/her former job status, as if the employee had not been removed.

VACCINATIONS:

The employer must support COVID-19 vaccinations for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) for vaccination and any side effects experienced following vaccination.

The ETS will last for six months, at which time OSHA is required to issue a permanent standard. There may be legal challenges to the ETS because: (1) OSHA can only issue emergency standards when a "grave

emergency" exists and given current conditions in the U.S., it is doubtful that such an emergency exists, and (2) because it is questionable that OSHA has the power to dictate to employers what to pay their employees and the benefits to be provided to their employees.

If you have any questions regarding the EST or if we can help you with compliance with it, give us a call.

[1] Its full text can be found at <https://www.osha.gov/coronavirus/ets>. The text starts at 1910 Subpart U-COVID-19 Emergency Temporary Standard.

[2] Covered employers must comply with most provisions by July 6 and until July 22 to comply with provisions on physical barriers, ventilation and training.

Related Practices

Labor and Employment

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