

Update Regarding Publication of OSHA Emergency Temporary Standard

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by Alissa Smith and Katie Ervin Carlson

On June 10, 2021, Dorsey's Labor & Employment attorneys outlined an Emergency Temporary Standard ("ETS") issued by OSHA. At the time, the ETS was not an official regulation because it had not yet been published in the Federal Register. On June 21, 2021, the ETS was published and, for covered healthcare employers, the compliance clock started ticking.

As a refresher, the ETS applies to "all settings where any employee provides healthcare services or healthcare support services." 1910.502(a)(1). Broadly, the following activities are exempted from coverage:

- the provision of first aid by an employee who is not a licensed health care provider;
- the dispensing of prescriptions by 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); or
- telehealth services performed outside of a setting where direct patient care occurs.



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In addition, for covered employers, ETS requirements regarding masking, physical barriers, and physical distancing do not apply to fully vaccinated employees in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present. 1910.502(a)(2)(i)-1910.502(a)(4).

As to employee vaccinations, the ETS specifically contemplates that there may be medical conditions, disabilities, or religious reasons employees cannot be vaccinated. Employers are reminded in the ETS guidance that they should make exceptions where appropriate. We discussed EEOC guidance regarding employee vaccinations in a [previous blogpost](#).

Except for requirements regarding physical barriers, ventilation, and training, employers must comply with the ETS mandates by July 6, 2021. Employers must become compliant with the physical barrier, ventilation, and training requirements by July 21, 2021.



When OSHA first issued the ETS, little direction was available directly from OSHA in terms of how employers could comply with the ETS's many mandates. Since publication of the ETS in the Federal Register, OSHA has fortified existing resources and added new ones. Employers should visit [OSHA's ETS website](#) for Fact Sheets, FAQs, Notification Removal and Return to Work Flow

Charts for both Employers and Employees, Employee Training Presentations, and more.

Further, it is important to understand how the new OSHA regulations interact with already existing guidance on similar COVID-19 related topics for health care providers which have been published by other federal and state agencies, such as the Centers for Medicare and Medicaid Services and the Centers for Disease Control and Prevention. In most cases, the various guidance and regulations do not conflict, but a careful review of all related laws and agency guidance is prudent, in order to fully understand the rules that apply in a given situation, especially when there is a conflict.

A qualified employment lawyer can assist employers with matters such as developing their COVID-19 Plan, planning the Workplace Hazard assessment, and conducting training; all things which are required by the ETS. Please contact the author of this blog post or your regular Dorsey & Whitney labor and employment attorney with further questions about how to come into compliance with the new OSHA guidance by the July 6 and July 21 deadlines.