

NEWS & INSIGHTS

OSHA issues new COVID-19 safety rules for health care sector employers

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

Recently, the Occupational Safety and Health Administration (OSHA) announced that it will soon issue an Emergency Temporary Standard (ETS) that mandates health care sector employers take certain actions to protect their employees and patients.

The ETS applies to employees who provide healthcare or health care support services, including skilled nursing homes and home healthcare. There are certain exemptions for healthcare providers who screen out patients who may have COVID-19. Significantly, OSHA also announced voluntary guidance for non-healthcare sector employers. While not required, compliance with these voluntary guidelines may significantly reduce a non-healthcare employer's prospective liability in the event of potential COVID-19-related litigation.

Employers should begin preparing for the ETS now

The ETS will go into effect immediately upon its publication in the National Registrar. While no publication date is currently set, it is likely that the ETS will be published, and become effective, within the next several weeks. Employers will then have 14 days to comply with most provisions of the ETS and 30 days to comply with the remaining provisions.

OSHA's requirements focus on protecting unvaccinated, or otherwise at-risk, employees. The ETS makes clear that employers no longer need to require masks or enforce social distancing requirements for fully vaccinated employees, who are not otherwise at-risk from COVID-19 exposure, if they are in "well-defined areas where all employees are fully vaccinated" and in a well-defined area where individuals who have COVID-19 or who could potentially have the virus are not reasonably expected to be present.

ETS to require new plans, training, roles, responsibilities and policies

The requirements of the ETS are extensive and health care sector employers should not delay in contacting legal counsel to ensure that they are prepared to meet these new requirements. One such requirement mandates that health care sector employers with more than ten employees develop a written virus safety plan. In developing the plan, the employer must conduct a workplace-specific hazard assessment, seek the input and involvement of non-managerial employees and designate a workplace safety coordinator who is knowledgeable in infection control principles and has the authority to implement, monitor and ensure compliance with the plan. Employers must also monitor their workplace to ensure the continuing effectiveness of the plan and update it as needed. The ETS also mandates the training of employees on disease transmission, workplace tasks and situations that could result in COVID-19 infection and all relevant policies and procedures.

The ETS further requires covered employers to provide "reasonable" time and paid leave for their employees to be vaccinated and, if applicable, to recover from any side effects that an employee may experience post-vaccination. Employers may set a reasonable cap on the amount of time and paid leave. OSHA has indicated that four hours of paid leave for each vaccination dose and, if applicable, up to sixteen hours of paid leave for any side effects (i.e. eight hours per vaccination dose), will meet the "reasonableness" requirement. Covered employers must also provide employees with their normal salary, up to \$1,400 per week for the first two weeks of absence, where an employee must be removed from the workforce (and unable to work remotely) because of a positive COVID-19 test or where the employee is suspected of being infected. Employers should also recognize that such employees may be entitled to additional benefits under other federal and state laws.

Start creating a plan with lawyers, compliance and HR today

Saxton & Stump attorneys [Stephen J. Fleury Jr., Esq.](#) and [Richard L. Hackman, Esq.](#) are available to further discuss how to cost-effectively ensure your organization's compliance with these new OSHA requirements and how our [Labor and Employment Group](#) can help develop internal best practices designed to minimize the risks to employers. Additionally, Saxton & Stump has strategic partnerships with [Granite GRC Consulting](#) to develop and implement effective compliance policies and [Granite HR Consulting](#) to assist client with recruiting, change management or talent development initiatives.

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