

Understanding OSHA's COVID ETS

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New Federal Vaccination Mandates

- All Medicare/Medicaid certified healthcare facilities
- Interim final regulations anticipated early October 2021 (CMS)
- Will likely allow limited medical and religious exemptions but no testing opt-out

- All federal workers and federal contractors

- Employers with >100 employees enforced by yet to be promulgated OSHA Emergency Temporary Standard (ETS)

New Focus On Worker Safety

- January 21, 2021: President Biden issues Executive Order aimed at increasing workplace protections and improving the safety of all employees
- March 12, 2021: Occupational Safety and Health Administration's (OSHA) issues National Emphasis Program (NEP) - COVID-19
 - Focused specifically on reducing or eliminating workers' exposure to COVID-19 and ensuring that employees are protected from retaliation
 - <https://www.osha.gov/enforcement/directives/dir-2021-01cpl-03>

What Does The NEP Do?

- NEP authorizes OSHA to enter and inspect companies on the OSHA Master List based on NAICS codes (Master List 1) and companies with elevated illness rate for calendar year 2020 (Master List 2), [CCRCs NAICS 62311]
- Area OSHA offices can add to or delete companies from list
- NEP creates additional authority for OSHA to conduct on-site and remote inspections without a “triggering event” (complaint, referral or self-report) for one year

New OSHA Emergency Temporary Standard

- OSHA issues “Occupational Exposure to COVID-19 Emergency Temporary Standard” (ETS) on June 21, 2021 (86 Fed. Reg 32376) finding GRAVE DANGER
- Interim final rule effective immediately
 - Compliance deadline **July 5, 2021** for most sections
 - Compliance deadline **July 21, 2021** for training, ventilation and physical barriers
- ETS will last 6 months unless OSHA issues final standard

The Anatomy Of An OSHA COVID-19 Investigation

- Investigative contact
 - Never informal despite appearance
 - OSHA Subpoenas
 - On-site inspections
- Requests for information
 - Documents and interviews
- Potential for criminal and civil penalties
 - Corrective action plans

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,494 per violation
Failure to Abate	\$13,494 per day beyond the abatement date
Willful or Repeated	\$134,937 per violation

OSHA Subpart U: COVID-19 Healthcare ETS

Understanding COVID-19 Healthcare ETS Subpart U

- Adds 4 new sections to OSHA regulations specific to protecting workers from COVID-19 in healthcare
 - **1910.502** – Healthcare: Applies to all settings where any employee provides healthcare services or healthcare support services
 - **1910.504** – Mini Respiratory Protection Program
 - **1910.505** – Severability
 - **1910.509** – Incorporation by Reference

Understanding COVID 19 ETS Subpart U

- Exempts fully vaccinated workers from masking, distancing, and barrier requirements when in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present
- Enforcement discretion for employers who are making a good faith effort to comply with the ETS

Who Is Covered?

- All settings where any employee provides healthcare services or healthcare support services
 - Healthcare services provided to individuals by professional healthcare practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the *purpose of promoting, maintaining, monitoring, or restoring health*
 - Healthcare support services facilitate provision of healthcare services include patient intake/admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services

Elements Of Written COVID-19 Plan For Each Workplace

- COVID-19 Safety Coordinator with authority to ensure compliance
 - Must be named and identified in Plan
 - Must implement and monitor Plan
 - Must be knowledgeable in infection control principles and practices as applied both to workplace and employee job operations

Elements Of A COVID-19 Plan

- Conduct and document workplace-specific hazard assessment
 - Identify potential workplace hazards related to COVID-19
 - If you intend to exempt fully vaccinated employees from certain requirements, include policies and procedures to determine employees' vaccination status

Elements Of A COVID-19 Plan

- Must seek *input and involvement* of non-managerial employees and their representatives in hazard assessment and Plan development/implementation
 - Safety meetings, a safety committee, conversations between a supervisor and non-managerial employees, a process negotiated with the exclusive bargaining agent (if any), or any other similarly interactive process
 - Solicit feedback through employee surveys or suggestion boxes

Elements Of A COVID-19 Plan

- Monitor each workplace to ensure the ongoing effectiveness of Plan and update as needed
 - When? New information about COVID-19 or if Safety Coordinator learns of deficiency from inspection or from another employee
 - Any deficiencies identified must be immediately addressed, and re-training of all affected employees must occur

Elements Of A COVID-19 Plan

- Address hazards identified during the hazard assessment
 - Policies and procedures to minimize the risk of transmission of COVID-19 to employees
 - Plan must account for the potential COVID–19 exposures to each employee generally and need not address each employee individually

Elements Of A COVID-19 Plan

- Employers whose employees work in the same physical location (e.g., therapists) must effectively communicate and coordinate with other employers:
 - COVID-19 Plan to ensure that each of its employees is protected and adjust Plan to address hazards presented by the other employees
 - Notify the controlling employer when those employees are exposed to noncompliant conditions
 - Protect employees who in course of their employment enter private residences or other locations not subject to ETS

Patient Screening And Management

- Limit and monitor points of entry to settings where direct patient care is provided
- Screen and triage patients, clients, and other visitors and non-employees
- Implement patient management strategies in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations"

Standard And Transmission-Based Precautions

- Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions based on CDC guidelines

Personal Protective Equipment (PPE): Facemasks

- Employees must wear facemask when indoors and when occupying a vehicle with others for work and change at least once per day, *except*
 - When alone
 - When eating and drinking, *if* at least 6 feet away from others or separated by a physical barrier
 - When wearing other respiratory protection
 - When important to see person's mouth (must provide alternative)
 - When employee cannot wear or if wearing presents a hazard

PPE: Face Shields

- If required by ETS or by employer, employer must ensure that they are cleaned at least once daily and not damaged
 - If employee provides, employer may allow use and is not required to reimburse employee

PPE: Respirators and Other PPE

- When employees have exposure to a person with suspected or confirmed exposure to COVID-19 or during aerosol-generating procedures
 - Must use respirator, gloves, isolation gown or other protective clothing and eye protection and comply with OSHA's Respiratory Protection Standard (1910.134)
 - ▶ Written Respiratory Protection Program (RPP)
 - ▶ Medical evaluation
 - ▶ Fit testing
 - ▶ Training on specific respirator and PPE

PPE: Respirators and Other PPE

- If employer provides respirators when they are not required or employees use respirators when not required the provisions of the Mini Respiratory Protection Program apply
- Employers must permit employees to wear their own respirator instead of a facemask

Aerosol-Generating Procedures

- On a person with suspected or confirmed COVID-19:
 - Must wear respirator and other PPE
 - Limit employees present to only those essential
 - Perform procedures in an airborne infection isolation room, if available
 - Clean and disinfect surfaces and equipment after the procedure is completed
 - *Does not include nebulizers*

Physical Distancing

- Each employee *must* be separated from all other people by at least 6 feet apart when indoors unless not feasible for a specific activity
 - If not feasible ensure employee is as far apart as possible

Physical Barriers

- Install cleanable or disposable solid barriers at each fixed work location in non-patient care areas where employees are not separated from other people by at least 6 feet

Cleaning And Disinfection

- Follow CDC guidelines in patient care areas, resident rooms, and for medical devices and equipment
 - All other areas, clean high-touch surfaces and equipment at least once a day and follow manufacturer's recommendations
 - If aware that COVID-19 positive person has been in workplace w/in past 24 hours, clean and disinfect following CDC guidance any areas, materials and equipment likely to have been contaminated
 - Provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible handwashing facilities

Ventilation

- Employer-owned or controlled existing HVAC systems
 - Ensure use in accordance with manufacturer's instructions and design specifications for the systems
 - Air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it
- All employers should also consider other measures to improve ventilation in accordance with "CDC's Ventilation Guidance," (e.g., opening windows and doors)

Health Screening And Medical Management

- Screen employees before each workday and shift (on-site or self-monitor)
 - If testing is required for screening, employee cannot be charged
- Require each employee to promptly notify employer when the employee is COVID-19 positive, suspected of having COVID-19, or experiencing certain symptoms:
 - Recent loss of taste and/or smell with no other explanation OR
 - Both fever ($\geq 100.4^{\circ}\text{F}$) and new unexplained cough associated with shortness of breath

Employer Notification of COVID-19 Exposure In Workplace

- Within 24 hours
 - Notify each employee who was not wearing a respirator and any other required PPE and has been in close contact with that person providing date(s) of contact
 - Notify all other employees who were not wearing a respirator and any other required PPE and worked in a well-defined portion of a workplace (e.g., a particular floor) in which that person was present during the potential transmission period (from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated and specify date(s) the COVID-19 positive person was in the workplace during transmission period
 - Notify other employers whose employees were in close contact or worked in a well-defined area of the workplace during potential transmission period
 - Must *not* include any employee's name contact information or occupation

Medical Removal

- Employer must immediately remove COVID-19 positive, exposed, or symptomatic employees and keep the employees removed until they meet return to work criteria
- PCR testing must be provided at no cost to employee
 - If employee refuses to take the test, employer must continue to keep employee removed but is not obligated to provide medical removal protection benefits
- Employees may be required to work remotely or in isolation if suitable work is available

Exemption From Work Removal

- If employee would otherwise be required to be removed but does not experience any symptoms and
 - Has been fully vaccinated or
 - Had COVID-19 and recovered within past 3 months

Medical Removal Protection Benefits

- Small employers exempt (<10 employees)
- Must continue to pay employee the same regular pay and benefits they would have received had they not been absent from work if employee is working remotely or in isolation
- Large employers (>500 employees) must continue to provide the benefits to which the employee is normally entitled
 - Must also pay the same regular pay they would have received had they not been absent from work, up to \$1,400 per week, until the employee meets the return to work criteria pay

Medical Removal Protection Benefits

- Employers (<500 employees) must pay employee up to the \$1,400 per week cap but, beginning in the third week of an employee's removal, the amount is reduced to only two-thirds of the same regular pay they would have received had they not been absent from work, up to \$200/day (\$1,000/week in most cases)
- Employer's payment obligation is reduced by the amount of compensation that the employee receives from any other source

Medical Removal Protection Benefits

- Employee must not suffer any adverse action as a result of removal from the workplace and must maintain all employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed

Return To Work

- Decisions regarding an employee's return to work after a COVID–19-related workplace removal must be made in accordance with guidance from a licensed healthcare provider or CDC's "Isolation Guidance" and CDC's "Return to Work Healthcare Guidance"
 - Staff mitigation strategies can only be used as last resort if the workers' absence would mean there are no longer enough staff to provide safe patient care, specific other amelioration strategies have already been tried, patients have been notified, and workers are utilizing additional PPE at all times

Vaccination

- Must provide reasonable time and paid leave for vaccinations and vaccine side effects
- Must make reasonable time and paid leave available for employees to receive all vaccination doses during work hours
 - Not required to pay for getting vaccinated outside of work but still must cover reasonable time & paid leave for side effects
- OSHA presumes that, if an employer makes available up to 4 hours of paid leave for each dose of the vaccine, as well as up to 16 additional hours of leave for any side effects of the dose(s) (or 8 hours per dose), the employer would be in compliance

New Anti-Retaliation Protections

- Ensure employees are aware of their rights under the ETS, and that they are protected from retaliation for exercising those rights
 - Do not discharge or in any manner discriminate against employees for exercising their rights under the ETS or for engaging in actions required by the standard
- Creates new enforcement authority
 - Allows OSHA to issue citations to employers for retaliating against employees, and require abatement including back pay and reinstatement, even if no employee has filed a traditional complaint within 30 days of the retaliation. OSHA has six months from the occurrence of a violation to issue a citation

No Cost To Employees

- All requirements of the ETS, except any employee self-monitoring for screening every workday and before each shift, must be at no cost to employees

How To Protect Workers From COVID-19

- Recordkeeping:
 - Establish a COVID-19 log (if more than 10 employees) of all employee instances of COVID-19 without regard to occupational exposure
 - Follow requirements for making records available to employees/representatives
- Report work-related COVID-19 fatalities and in-patient hospitalizations to OSHA

Documentation Of Hazardous Assessment

- Specific hazards or risk factors identified
- A plan to abate identified hazards or risk factors in a timely manner
- Date(s) the assessment was performed
- The names and titles of the individuals who participated in the evaluation and contributed to the written plan
- A description of the actions to be taken
- Actions planned to address and prioritize mitigation of identified hazards or risk factors
- Identification of high-risk area(s), tasks, and occupations

Documentation Of Hazardous Assessment

- Communication of the status of planned or completed actions to employees who may be affected by the identified hazards or risk factors
- Dates by which planned actions are to be completed
- Written documentation of completed actions including:
 - What method(s) of control was/ were decided upon
 - Area(s) where control(s) was/were implemented
 - Specific date(s) of completion
 - The names and titles of the individuals who authorized and managed implementation of control

Training

- Must be in a language and at a literacy level that the employee understands
- Training must be offered during scheduled work times and at no cost
- Additional training required if changes occur or employee does not demonstrate necessary skill or understanding
- Training must be conducted by a knowledgeable person and employees must have opportunity to ask questions and get answers

Required Training Topics

- COVID–19 transmission
- Symptoms and ways to reduce risk
- Patient screening and management
- Workplace tasks and situations that could result in COVID–19 infection
- Employer policies and procedures related to preventing the spread of COVID–19
- PPE
- Cleaning and disinfection
- Health screening and medical management, including medical removal
- Sick leave
- Information on multi-employer agreements related to infection control and on the employer’s COVID–19 plan
- Identity of the safety coordinator for the COVID–19 plan

Recordkeeping

- Retain all versions of the COVID– 19 plan and the COVID-19 log
- Establish and maintain a COVID– 19 log
 - Record every instance of a positive employee *regardless* of whether the incident is work related
 - Must be recorded within 24 hours of learning employee is COVID-19 positive
 - Must be maintained as confidential medical record

COVID-19 Log

- Must contain, for each instance, the employee's name, one form of contact information, occupation, location where the employee worked, the date of the employee's last day at the workplace, the date of the positive test for, or diagnosis of, COVID-19, and the date the employee first had one or more COVID-19 symptoms, if any were experienced
- Should not record incidences for employees who work exclusively from home and thus could not expose others in the workplace

OSHA 300 Log

- COVID-19 log and OSHA 300 log must both be maintained
- OSHA 300 log requires determination that illness is work-related
- OSHA 300 log must be provided to employees, former employees and their representatives with names of injured or ill employees
 - COVID-19 log must be redacted
 - Employees may ask for a 300 log entry to be marked “privacy concern case”
- OSHA 300 log may not be used for a substitute for a COVID-19 log

Availability Of Records

- Must provide for examination and copying by next business day
 - All versions of COVID-19 plan to any employees, their personal representatives and their authorized representatives
 - The individual COVID-19 log entry for a particular employee to that employee and to any one having written authorized consent of that employee

Employees, Representatives Must Be Given Redacted COVID-19 Log

- A version of the COVID–19 log that removes the names of employees, contact information, and occupation
 - ▶ Only include the location where the employee worked
 - ▶ The last day that the employee was at the workplace before removal
 - ▶ The date of that employee’s positive test for, or diagnosis of COVID–19
 - ▶ The date the employee first had one or more COVID–19 symptoms, if any were experienced

Reporting COVID–19 Fatalities And Hospitalizations To OSHA

- Each work-related COVID–19 fatality within 8 hours of the employer learning about the fatality
- Each work-related COVID–19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization
 - Note: OSHA has removed the 8 hour and 24 hour time limitations for reporting fatalities and illnesses linked to workplace exposure
- Reporting is in addition to recording the COVID-19 log

Determining Work-Relatedness

- The type, extent, and duration of contact the employee had at the work environment with other people, particularly the general public
- Physical distancing and other controls that impact the likelihood of work-related exposure
- The extent and duration of time spent in a shared indoor space with limited ventilation
- Whether the employee had work-related contact with anyone who exhibited signs and symptoms of COVID–19

How To Report COVID-19 Fatalities

- By telephone to the OSHA Area Office that is nearest to the site of the incident
- By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742)
- By electronic submission using the reporting application located on OSHA's public website at www.osha.gov

Mini Respiratory Protection Program – Employee Respirators

- Employers must provide this notice to employees:
 - Respirators can be an effective method of protection against COVID–19 hazards when properly selected and worn. Respirator use is encouraged to provide an additional level of comfort and protection for workers even in circumstances that do not require a respirator to be used. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. If your employer allows you to provide and use your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard. You should do the following:
 - ▶ Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator’s limitations.
 - ▶ Keep track of your respirator so that you do not mistakenly use someone else’s respirator.
 - ▶ Do not wear your respirator where other workplace hazards (e.g., chemical exposures) require use of a respirator. In such cases, your employer must provide you with a respirator that is used in accordance with OSHA’s respiratory protection standard (29 CFR 1910.134). For more information about using a respirator, see OSHA’s respiratory protection safety and health topics page (<https://www.osha.gov/respiratoryprotection>).

Mini Respiratory Protection Program – Employer Provided Respirators

- Provide training prior to first use and if employees change the type of respirator, in a language and at a literacy level the employee understands, and comprehends at least the following:
 - How to inspect, put on and remove, and use a respirator
 - Limitations and capabilities of the respirator, particularly when the respirator has not been fit tested
 - Procedures and schedules for storing, maintaining, and inspecting respirators
 - How to perform a user seal check
 - How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators and what to do if the employee experiences signs and symptoms

Mini Respiratory Protection Program: Reuse of Respirators

- Ensure that a filtering facepiece respirator used by a particular employee is only reused by that employee, and only when:
 - Respirator is not visibly soiled or damaged
 - Respirator has been stored in a breathable storage container (e.g., paper bag) for at least five calendar days between use and has been kept away from water or moisture
 - Employee does a visual check in adequate lighting for damage to the respirator's fabric or seal
 - Employee successfully completes a user seal
 - Employee uses proper hand hygiene before putting the respirator on and conducting the user seal check
 - Respirator has not been worn more than five days total
- Ensure that an elastomeric respirator or PAPR is only reused when:
 - Respirator is not damaged
 - Respirator is cleaned and disinfected as often as necessary to be maintained in a sanitary condition
 - A change schedule is implemented for cartridges, canisters, or filters

Mini Respiratory Protection Program: Discontinuance of Use or Respirators

- Employers must require employees to discontinue use of a respirator when either the employee or a supervisor reports medical signs or symptoms (e.g., shortness of breath, coughing, wheezing, chest pain, any other symptoms related to lung problems, cardiovascular symptoms) that are related to ability to use a respirator
- Any employee who previously had a medical evaluation and was determined to not be medically fit to wear a respirator must not be provided with a respirator under this standard unless they are re-evaluated and medically cleared to use a respirator

Incorporation By Reference

- OSHA has incorporated a number of CDC and other guidances by reference
 - This makes compliance with those incorporated guidances mandatory
 - Nursing homes may be cited for survey and certification deficiencies
 - All covered healthcare service providers will be cited by OSHA

Next Steps

- Start reviewing what you have in place now
 - OSHA does not expect a complete “Re-Do”
 - COVID-19 Plan and Hazard Assessment
 - ▶ Document front line involvement
 - Identify COVID-19 Safety Coordinator
 - Identify other employers and contact them
 - Work with Human Resources

My Contact Information

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