



Robert Ayers

Partner
307.734.4514
Jackson Hole
RDayers@hollandhart.com

Unpacking OSHA's Historic Emergency Temporary Standard and Updated COVID-19 Guidance

Insight — June 16, 2021

On June 10, OSHA announced two significant developments in the ongoing saga of COVID-19 restrictions in the workplace. First, OSHA issued an emergency temporary standard (ETS) applicable to healthcare settings. Second, OSHA updated its COVID-19 guidance for all other non-healthcare settings.

Healthcare ETS

The ETS represents the first set of requirements issued by federal OSHA in response to COVID-19. Prior to the ETS, OSHA had only issued non-binding guidance. While the ETS has been expected for months, what is surprising is its scope. Instead of applying to all industries or select high-risk industries, the ETS only applies to “settings where any employee provides healthcare services or healthcare support services.”

For covered employers, the ETS contains various requirements aimed at protecting healthcare workers from contracting COVID-19. Key requirements of the ETS include a written COVID-19 plan, patient screening and management, personal protective equipment (PPE), physical distancing and barriers, cleaning and disinfection, ventilation, health screenings, vaccinations, training, recordkeeping, and a mini-respiratory protection program.

While several of the requirements are likely already being followed by healthcare employers, some requirements may necessitate changes in the workplace. For example, the ETS requires employees, regardless of vaccination status, to wear facemasks “when indoors and when occupying a vehicle with other people for work purposes.” There are limited exceptions to the facemask requirement, including when an employee is alone in a room or eating or drinking while either at least six feet away from others or separated by a physical barrier. Employers who own or control their building may also need to review their HVAC systems to ensure compliance with the ETS ventilation requirements.

In light of the numerous provisions in the ETS, we recommend that all employers whose employees perform some level of healthcare function evaluate their workplace for applicability of the ETS and, if necessary, analyze their documentation and practices for compliance with ETS requirements.

Updated Guidance for General Industry

For employers who are not covered by the new ETS, OSHA updated its guidance on mitigating and preventing the spread of COVID-19 in the workplace. The updated guidance focuses on unvaccinated and otherwise “at-risk” employees. “At-risk” employees include those with conditions that may affect the employee's ability to have a full immune response to vaccination, such as a prior transplant or prolonged use of immune-weakening medications.

The updated guidance represents a significant shift from OSHA's prior guidance, which did not differentiate between vaccinated and unvaccinated individuals. In the latest guidance, OSHA states that “most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at risk from COVID-19 exposure” and states that in workplaces where all employees are fully vaccinated, most employers will no longer need to take COVID-19 related actions to protect their workers.

For employers with unvaccinated or otherwise at-risk employees, the updated guidance recommends various measures to protect those employees and mitigate the spread of COVID-19, including granting paid time off for employees to get vaccinated; instructing infected, ill, and exposed unvaccinated workers to stay home from work; implementing physical distancing for unvaccinated and at-risk employees; providing face coverings for unvaccinated and at-risk employees; suggesting that unvaccinated guests and customers wear face coverings; maintaining ventilation systems; and performing routine cleaning and disinfection. Finally, the updated guidance also provides additional best practices to protect unvaccinated and at-risk workers in high-risk workplaces such as manufacturing, food processing, and high-volume retail and grocery stores.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.