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OSHA's COVID-19 Emergency Standard Requires Written Plan, Precautions

EXECUTIVE SUMMARY

OSHA's Emergency Temporary Standard for healthcare employers requires an extensive plan and the implementation of physical safety barriers.

- The rule encourages employee vaccinations for COVID-19.
- Healthcare employers already are carrying out much of what the rule requires.
- Employers must provide paid leave for COVID-19 exposure.

The new COVID-19 requirements from the Occupational Safety and Health Administration (OSHA) for healthcare employers create substantial obligations, but many hospitals already are carrying out much of what is required. The challenge may come in formalizing a written plan and ensuring it addresses all of OSHA's expectations.

The [916-page Final Rule](#) involving an Emergency Temporary Standard (ETS) is principally directed to healthcare employers and organizations that employ people in healthcare support roles, notes **Adam D. Kemper**, JD, partner with Kelley Kronenberg in Fort Lauderdale, FL.

Provisions within the ETS require such actions as the installation of physical barriers, ventilation systems, and training.

Kemper explains the ETS requires healthcare employers to develop and implement a written plan that identifies and controls COVID-19 hazards in the workplace and to implement other requirements to reduce COVID-19 in the workplace, including thorough patient screening and management, standard and transmission-based precautions, mandatory issuance usage of face masks and other personal protective equipment, physical distancing of at least six feet, physical barriers, cleaning and disinfection, ventilation, health screening and medical management, training, anti-retaliation protocols, record-keeping, and reporting.

The ETS also encourages vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects. In a recent [frequently asked questions \(FAQ\) document](#), OSHA stated that "if an employer makes available to its employees four 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 doses, or eight hours per dose, the employer would be in compliance with this requirement."

“Thus, there is no reason why a healthcare employer shouldn’t provide at least the minimum time off as recommended by OSHA,” Kemper says. *(See the story in this issue for more on requiring employee vaccinations.)*

The ETS also exempts certain workplaces where all employees are fully vaccinated and individuals with COVID-19 are prohibited entry, Kemper says. For example, OSHA noted in the same FAQ “the ETS does not apply to 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.”

“The major takeaway from this ETS is that healthcare employers need to continue to take this pandemic very seriously in order to protect their employees from harm and to take immediate action to review the standards set forth in the ETS and adhere to them,” Kemper says. “While I am hopeful that most of the safety requirements have already been in place or will be in place by the deadlines set forth in the ETS, I anticipate that the ETS-mandated training and recordkeeping will be the overlooked areas in an already overworked, overwhelmed healthcare industry.”

Some Work Already in Place

The good news is much of what OSHA requires in the ETS is consistent with what the agency has been asking of healthcare employers since the beginning of the pandemic, says **Kaiser H. Chowdhry**, JD, associate with Morgan Lewis in Washington, DC. The difference is the previous recommendations are now required.

“Most healthcare employers should have a written COVID plan in place by now, but if you don’t, the ETS now requires it and specifies certain components,” he says. “You’ll find similar situations in which you probably already have implemented physical distancing and barriers, for instance, but the ETS tells you exactly what OSHA wants to see.”

Among the new requirements is one that involves employees in a COVID-19 hazard assessment and in writing the plan, Chowdhry notes. That might be challenging or easily overlooked if you already have a plan in place, he says. OSHA does not offer much guidance on how to involve employees.

Employers also should consider how to take advantage of the way the ETS does not apply to fully vaccinated workers.

“You may want to take a look at your physical layout and see if you can develop areas in which ETS rules apply and areas where they don’t, because of your vaccination levels,” he says.

Chowdhry notes paid leave is required regardless of whether the COVID-19 exposure was work-related, and there is no cap on how long the employer must pay the employee on leave. OSHA also changed the reporting requirement so that instead of notifying OSHA within 24 hours of exposure to the virus, the hospital now must report within 24 hours of learning of the employee’s hospitalization.

Reporting Requirements Changed

The reporting period for COVID-19-related fatalities also has changed, notes **David Berndt**, JD, associate general counsel with G&A Partners, a human resources company in Katy, TX. The ETS requires reporting an inpatient hospitalization or death that occurs any time after a work-related

incident. Previously, hospitals only had to report hospitalizations and deaths that happened within 30 days of the incident.

OSHA provides several useful tools on its website for determining whether an employer is covered by the ETS and how to comply with the rules, Berndt says. In particular, he directs risk managers to the guidance on how to maintain the required COVID-19 log.

“Communication among employers in the same space is important. Different employers sharing the same physical space, like physician practices operating within the hospital or a shared building, must communicate their COVID-19 plans with each other,” he says. “They have to adjust their plans to address hazards shared by other employers sharing their physical location.”

SOURCES

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