



Healthcare Entities Need To Take Advantage of the Exceptions to the New Emergency COVID-19 Standards

June 2021

Healthcare entities were already in the cross-hairs of federal regulators as part of a National Emphasis Program to inspect and audit facilities where workers are more likely to be exposed to COVID-19. Now an audit can focus on a host of new emergency requirements that facilities will have to implement with very little time. Facilities that do not treat COVID-19 patients may be eligible for certain exceptions, and should be sure to enact or modify policies and procedures to take advantage of available exceptions.

On June 10, 2021, the Occupational Safety and Health Administration or OSHA issued regulations setting the new Emergency Temporary Standard for healthcare entities regarding occupational exposure to COVID-19. Once published, which could happen any day now, employers will have little time to comply with the expansive new requirements.

Who is Affected?

Unless an exception applies, the new regulations apply in all settings where any employee provides healthcare services or healthcare support services.

What Are the Compliance Deadlines?

The regulations were officially published on June 21, 2021. Most compliance requirements must be met within 14 days of publication (July 5, 2021). Employers will have 30 days to comply with the new requirements for physical work barriers, ventilation, and training (July 21, 2021).

What Entities Are Exempt from the New Requirements?

Any entity that could potentially qualify for an exception should give serious consideration to enacting policies and procedures, including vaccination requirements, to take advantage of the exception and avoid being subjected to the onerous requirements of the new emergency regulations. Pertinent exclusions include:

- Non-hospital ambulatory care settings where all non-employees are screened, and access is limited to prevent potential employee exposure.

- Well-defined hospital ambulatory settings where all employees are vaccinated, and all non-employees are screened, and access is limited to prevent exposure.
- Home healthcare settings where all employees are vaccinated, and all non-employees are screened, and access is limited to prevent exposure.
- In well-defined areas where there is no reasonable expectation that any COVID exposed person will be present, certain regulatory provisions regarding PPE, physical distancing, and physical barriers will not apply to fully vaccinated employees.

Ambulatory Care is defined in the regulations as healthcare services performed on an outpatient basis, without admission to a hospital or other facility. The regulations give examples such as the offices of physicians; hospital outpatient departments; ambulatory surgical centers; and urgent care clinics.

What Are the Requirements?

If an entity does not qualify for an exception, it must comply—in a matter of days—with an expansive set of new regulatory requirements that includes, but is not limited to, the following:

1. Creation of a COVID-19 Plan based on a site-specific hazard assessment.
2. Updated patient screening and management.
3. New requirements for PPE, ventilation, and physical-barriers between employees.
4. Specific cleaning and disinfection requirements.
5. Paid employee leave for vaccinations as well as requirements to remove, and compensate, employees potentially exposed to COVID-19.
6. Creation and dissemination of new employee training materials, including anti-retaliation requirements.

Are There Resources Available?

Yes. FAQs and additional resources for implementing the new requirements can be found at: <https://www.osha.gov/coronavirus/ets>.

Parker Hudson attorneys have extensive regulatory compliance and DOL/OSHA experience, and are available to answer any questions or concerns you have regarding the scope and implications of these new requirements, the ability to take advantage of available exceptions, changes you may need to make to ensure continued compliance, and dealing with facility inspections and audits. For more information, contact Paul Barsness or Stefan Grow.



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