



Are You Ready? Now That Regulations Are Published, Healthcare Entities Will Have Just 14 Days to Comply With 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.

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?

The new regulations apply in all settings where any employee provides healthcare services or healthcare support services. This includes employees in hospitals, nursing homes, and assisted living facilities; emergency responders; home healthcare workers; and employees in ambulatory care facilities where suspected or confirmed COVID-19 patients are treated.

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).

Are There Exceptions to the Regulations?

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 limited.
- Well-defined hospital ambulatory settings where all employees are vaccinated, and all non-employees are screened, and access limited.
- Home healthcare settings where all employees are vaccinated, and all non-employees are screened, and access limited.
- In well-defined areas where there is no reasonable expectation that any COVID exposed person will be present, provisions regarding PPE, physical distancing, and physical barriers do 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?

1. **COVID-19 Plan** (§ 1910.502(c))

A plan is required for each workplace, though substantially similar facilities may be able to rely on a single plan.

The plan must be in writing if the employer has 10 or more employees.

The plan must designate a safety coordinator with authority to ensure compliance.

The employer must conduct a workplace-specific hazard assessment.

The plan must address hazards identified in the hazard assessment.

The employer must develop policies and procedures for determining vaccination status of employees in order to take advantage of exemptions for fully vaccinated employees.

2. **Patient Screening** (§ 1910.502(d))

In settings where direct patient care is provided, the employer must:

- Limit and monitor points of entry to settings where direct patient care occurs.
- Screen and triage all entering these settings.
- Implement other applicable patient management strategies in accordance with the CDC's "COVID-19 Infection Prevention and Control Recommendations."

3. **Transmission Precautions** (§ 1910.502(e))

Employers must develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC’s “Guidelines for Isolation Precautions.”

4. PPE (§ 1910.502(f))

Employers must ensure FDA-cleared or authorized facemasks are worn indoors and in vehicles (with certain exceptions listed for eating, when alone in room, and when necessary to remove the mask).

Respirators and other PPE must be worn when dealing with specific situations (for example, treating someone exposed/suspected or during aerosol-generating procedures).

5. Aerosol-Generation Procedures (§ 1910.502(g))

During these procedures, the employer must limit the employees present to only essential staff; ensure procedure performed in an existing AIIR; and after procedure is complete, areas must be cleaned.

6. Physical Distancing (§ 1910.502(h))

Employees must maintain a distance of 6 feet unless distancing not feasible.

7. Physical Barriers (§ 1910.502(i))

Barriers must be erected at each fixed location (such as the lobby or check-in desk) outside of direct patient care areas where employees are not separated from other people by 6 feet. These barriers are not required in direct care areas or patient rooms.

8. Cleaning and Disinfection (§ 1910.502(j))

In patient care areas, resident rooms, and for medical devices and equipment, the employer must follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC’s “COVID-19 Infection Prevention and Control Recommendations” and CDC’s “Guidelines for Environmental Infection Control.”

Everywhere else:

- Clean high touch surfaces at least once a day;
- When the employer is aware that a person who is COVID-19 positive has been in the workplace within the last 24 hours, clean and disinfect, in accordance with CDC’s “Cleaning and Disinfecting Guidance” any areas, materials, and equipment under the employer’s control that have likely been contaminated by the person who is COVID-19 positive (e.g., rooms they occupied, items they touched); and
- Alcohol-based sanitizer and accessible hand-washing facilities.

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9. Ventilation (§ 1910.502(k))

MERC-13 or higher filters are required if compatible with the HVAC system and if the employer owns or controls the building.

10. Health Screening and Medical Management (§ 1910.502(l))

Daily screenings required but can be self-monitored.

If COVID-19 testing is required for screening then the employer cannot charge the employee for it.

Employees must be required to notify of exposure, and once notified employer has 24 hours to notify other employees that fall within specified transmission period and area.

Employees with confirmed test or diagnosis or symptoms must be removed from the workplace with specified return to work criteria.

Employers must compensate employees removed from the workplace at regular rate of pay up to \$1,400. For employers with fewer than 500 employees, the amount may be reduced beginning the third week to two-thirds regular pay capped at \$200 per day or \$1,000 per week.

11. Vaccination (§ 1910.502(m))

Reasonable time and paid leave must be provided for vaccinations.

12. Training (§ 1910.502(n))

Training must provide the following at the literacy level and in the language of staff:

- Information on COVID-19 as prescribed in the regulations.
- Employer policies and procedures on PPE, infection control, sick leave, and various other areas prescribed in the regulations.

Prior training may be acceptable if covers topics in the regulations.

Retraining is required under certain circumstances.

The training must be interactive with the staff and allow for questions.

13. Anti-Retaliation (§ 1910.502(o))

Employers are prohibited from discriminating against employees for exercising their rights as protected by the regulation.

Employers must notify employees of the protections under this regulation.

14. Record Keeping (§ 1910.502(q))

Only applies to employers with 10 or more employees.

The facility employer must retain all versions of the COVID-19 plan implemented to comply with these regulations.

The employer must log every instance of an employee positive diagnosis, regardless of whether connected to work.

The regulations set out items required for the log including information such as employee's name, occupation, last day worked, date of positive test, and symptoms. The information log must be recorded within 24 hours of the employer learning of the employee positive test result.

The employer must make an employee's log available to that employee and a redacted log available to any employee.

Additionally, the written COVID-19 plan must be made available to all employees and their representatives.

15. Reporting of Fatalities and Hospitalizations (§ 1910.502(r))

Employer must report to OSHA:

- Each work-related COVID-19 fatality within 8 hours of learning about the fatality.
- Each work-related in-patient hospitalization within 24 hours of learning about the hospitalization.

16. Mini-Respiratory Protection Program (§ 1910.504)

If employees provide their own respirators, then the employer must follow certain employee notice requirements.

If the employer provides respirators to employees, then training must be provided to employees along with seal and equipment checks. Additional reuse requirements must be met.

17. Other Standards Incorporated by Reference

The regulations incorporate by reference certain EPA and Safety Equipment standards, as well as the following CDC guidelines. The applicable corresponding section is noted for reference.

- Cleaning and Disinfecting Guidance. COVID-19: Cleaning and Disinfecting Your Facility; Every Day and When Someone is Sick, updated April 5, 2021, incorporation by reference (IBR) approved for § 1910.502(j).
- COVID-19 Infection Prevention and Control Recommendations. COVID-19: Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic, updated February 23, 2021, IBR approved for §§ 1910.502(d) and (j).
- Guidelines for Isolation Precautions. 2007 Guideline for Isolation

Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, updated July 2019, IBR approved for §§ 1910.502(e) and (f).

- Guidelines for Environmental Infection Control. Guidelines for Environmental Infection Control in Health-Care Facilities, updated July 2019, IBR approved for § 1910.502(j).
- Isolation Guidance. COVID-19: Isolation If You Are Sick; Separate yourself from others if you have COVID-19, updated February 18, 2021, IBR approved for § 1910.502(l).
- Return to Work Healthcare Guidance. COVID-19: Return to Work Criteria for Healthcare Personnel with SARS-CoV-2 Infection (Interim Guidance), updated February 16, 2021, IBR approved for § 1910.502(l).

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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