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Masks Off To The Fully Vaccinated: COVID-19 Safety In The Health Care Workplace

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While a growing number of Americans are fully vaccinated, the U.S. Occupational Safety Hazard Administration (OSHA) has concerns about unvaccinated or at-risk individuals in the health care workplace contracting COVID-19. President Biden issued an executive order on Jan. 21, 2021, addressing the national importance of protecting health care employees who remain at risk of contracting COVID-19. Now, with states varying in COVID-19 safety measures, it has become clear that a federal standard is needed to ensure the safety of all health care workers throughout the nation.

In response to these ever-growing changes, OSHA issued an [Emergency Temporary Standard \(ETS\)](#) providing guidance to reduce risk of COVID-19 transmission for health care employers and workers. Health care workers include all individuals employed in hospitals, nursing homes, and assisted living facilities; emergency responders; home healthcare workers; and employees in ambulatory care facilities. These employees continue working in spaces where they may be exposed to patients that have contracted the virus, and OSHA's new standards align with current CDC guidance regarding COVID-19 safety in those environments.

Although the ETS is specific to the health care industry, other businesses and employers may use the guidance to protect unvaccinated individuals in comingled spaces where some individuals are vaccinated and others are not.

The ETS requires:

- Employers to encourage employees to receive the vaccine. Employers with less than 500 employees are eligible for tax credits if they provide paid time off to employees to receive the vaccination and recover from possible side effects
- Maintaining adequate ventilation in accordance to [OSHA COVID-19 Guidance on Ventilation in the Workplace](#)
- Employees who are infected, exposed to infected individuals, or have COVID-19 symptoms to remain home; this absence must not be punitive to the employee
- Development and implementation planning to involve non-managerial employees
- Patient monitoring procedures that limit the transmission of the COVID-19
- Monitoring of building entry and spaces where workers are in direct contact with patients
- Employers to provide employees who are unvaccinated with N95 respirators or other personal protective equipment (PPE)
- Social distancing of 6 feet between workers; if this is not possible, employers are required to establish barriers between employees wherever feasible
- Adherence to the CDC's guidelines around cleaning and disinfecting surfaces
- Patients, customers, or other guests who are unvaccinated to wear face coverings

ETS does not require vaccinated workers to wear masks, social distance or adhere to other barrier requirements, except when workers are in well-defined areas where there is reasonable expectation that any person will be present with suspected or confirmed coronavirus exposure.

States are required to assess and implement a plan in accordance with the ETS within 30 days of the new rule's publication to the [Federal Registry](#) (July 21, 2021) and must notify OSHA of its plan within 15 days. Implementation of physical barriers, ventilation, and training are required 30 days after the Federal Registry publication date, and all other requirements must be implemented 14 days after publication (July 5, 2021).

OSHA will use its discretion to avoid citing employers who miss compliance deadlines but are making a good faith effort to comply with the ETS.

For further details regarding the ETS, please look to the following links: [OSHA National News Release](#); [OSHA ETS Fact Sheet](#); and [OSHA ETS FAQs](#).

The Barnes & Thornburg Wage and Hour Practice Group will continue to monitor employment-related [COVID-19 rules and litigation](#), and will provide updates as more developments emerge. As always, stay tuned.