

# OSHA Withdraws COVID-19 Healthcare Emergency Temporary Standard, Vows to Use General Duty Clause

By Patricia Anderson Pryor, Michael R. Bertoncini, Jenifer M. Bologna, Sarah R. Skubas,

December 28, 2021

## Meet the Authors

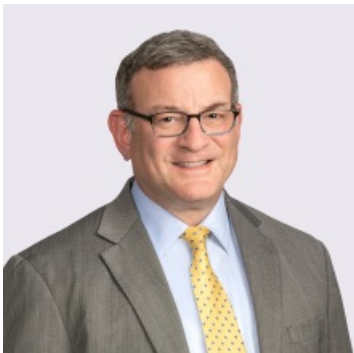


**Patricia Anderson Pryor**

Office Managing Principal

513-322-5035

Patricia.Pryor@jacksonlewis.com



**Michael R. Bertoncini**

Principal

(617) 305-1270

Michael.Bertoncini@jacksonlewis.com



The Occupational Safety and Health Administration (OSHA) has announced that it is withdrawing most of the [Emergency Temporary Standard](#) for healthcare employers (Healthcare ETS) it promulgated more than six months ago.

The agency did not withdraw recordkeeping provisions requiring COVID-19 logs and case reports, as they were promulgated under separate provisions of the Occupational Safety and Health Act (OSH Act).

OSHA “strongly urges” continued compliance with the withdrawn standard, promising to use the discontinued requirements of the Healthcare ETS to “vigorously enforce” the General Duty Clause, a “catch-all” provision of the OSH Act covering hazards not addressed in promulgated standards. OSHA also promised to renew enforcement of general standards governing respiratory protection and personal protective equipment. OSHA will formalize its announcement with a notice in the *Federal Register*.

The Healthcare ETS included the following requirements:

- A COVID-19 plan, which must be in writing for covered healthcare employers with more than 10 employees;
- Patient screening and management;
- Policies and procedures to adhere to standard and transmission-based precautions based on guidelines promulgated by the U.S. Centers for Disease Control and Prevention (CDC);
- Personal protective equipment, including face masks while workers are indoors or in vehicles together and respirators when employees are exposed to or engaging in aerosol-generating procedures with individuals with known or suspected cases of COVID-19;
- Additional requirements to limit exposure and to disinfect areas when engaging in aerosol-generating procedures with individuals with known or suspected cases of COVID-19;
- Physical distancing while indoors;
- Cleaning and disinfection in accordance with CDC guidelines;
- Paid leave for vaccinations and recovery;
- Anti-retaliation protections for engaging in actions required by the ETS;
- For covered healthcare employers with more than 10 employees, a COVID-19 log;
- Reporting COVID-19 fatalities and hospitalizations to OSHA; and
- Medical management requirements, including:
  - Daily health screenings;
  - Employee notification of employers if an employee tests positive for COVID-19, suspect they have COVID-19, or have symptoms;

## Jenifer M. Bologna

Principal

(914) 872-6869

Jenifer.Bologna@jacksonlewis.com



## Sarah R. Skubas

Principal

(860) 522-0404

Sarah.Skubas@jacksonlewis.com

## Related Services

COVID-19

Disability, Leave and Health

Management

Healthcare

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

- o Employer notification of employees within 24 hours of known cases;
- o Removal of employees from the workplace in accordance with CDC guidance; and
- o For covered healthcare employers with more than 10 employees, medical removal protection benefits for isolated or quarantined employees.

### Next Steps for Healthcare Employers

Considering the aggressive posture OSHA has taken with healthcare employers throughout the pandemic, healthcare employers would be wise to heed OSHA's warning and continue to follow the rescinded Healthcare ETS as best practices for mitigating COVID-19 in the workplace. They should also be aware that they must continue to maintain COVID-19 logs of positive COVID-19 cases of employees, regardless of whether those cases are work-related (for employers with more than 10 employees) and report work-related COVID-19 inpatient hospitalizations within 24 hours and work-related fatalities within eight hours of learning of such events to OSHA (regardless of the number of employees). In addition, according to OSHA's FAQs for its vaccine-or-test ETS, healthcare employers with at least 100 employees are required to comply with OSHA's vaccine-or-test ETS because the Healthcare ETS is no longer in effect.

If you have questions or need assistance on the OSHA ETS, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [Workplace Safety and Health Practice Group](#) or our [OSHA ETS Team](#).