

COVID-19 Workplace Updates: Vaccinations and Safety Rule

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As vaccination rates rise, there are new developments in COVID-19-related workplace issues that specifically affect health care employers and their employees who are at the greatest risk of exposure to individuals with COVID-19. The first is the new United States Department of Labor, Occupational Safety and Health Administration (OSHA) Safety Rule and the second is the evolving law relating to mandatory vaccinations. These new developments should be viewed in the overall context of increased enforcement from OSHA and New York State agencies.

Safety Rule

Pursuant to President Biden's January 21, 2021, Executive Order on Protecting Worker Health and Safety during the COVID-19 pandemic, OSHA issued its [COVID-19 Workplace Safety Rule](#) on Thursday, June 10, 2021. The rule is effective June 21, the date it was published in the Federal Register, and has been promulgated as an [Emergency Temporary Standard](#) (ETS). This new rule is aimed at employees in health care settings who are most at risk of exposure to people who may have COVID-19.

Health Care Settings

The ETS applies to "all settings where any employee provides health care services or health care support services." This would include hospitals, nursing homes, assisting living facilities, emergency responses, home health care workers, employees in ambulatory care facilities, and private medical practices, among others, unless they fall under an exception. The ETS requires health care employers to develop and implement a COVID-19 plan that includes a designated safety coordinator, a hazard assessment for the specific workplace, guidelines for fully vaccinated employees, and other policies and procedures to minimize risk of transmission of COVID-19. In addition, there must be patient screening and management at limited points of entry. These requirements will not apply if a health care employer falls under an exception. The exceptions most relevant to medical practices are:

- Nonhospital ambulatory settings where all nonemployees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings
- Well-defined hospital ambulatory settings where all employees are fully vaccinated and all nonemployees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings
- Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing)
- Telehealth services performed outside of a setting where direct patient care occurs

The exception that would apply to most private offices is the exception for screening. If all nonemployees are screened prior to entry into a private office and those individuals with suspected or confirmed COVID-19 are not permitted, the exception would apply. In order to meet this exception, the employer's COVID-19 plan should set forth the screening requirements and make

it clear that anyone with suspected or confirmed COVID-19 is excluded from the office. OSHA has developed a [flowchart](#) to assist employers in determining whether and how they are covered by the ETS.

The ETS is effective June 21, and health care employers have 14 days to implement their safety plans and screening points of entry. They have 30 days to upgrade ventilation systems and other physical barrier requirements.

Mandatory Vaccinations

Making vaccinations mandatory for health care workers has been a hot button issue for medical practices. Since the need for certain safety precautions are eliminated when employees are fully vaccinated, more workplaces are considering whether to mandate vaccination for their employees. On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) published [guidance](#) for employers who are considering mandating or offering incentives for COVID-19 vaccinations. In its guidance, the EEOC notes that employers who do require vaccinations or provide incentives are still subject to the American with Disabilities Act and, therefore, must provide for reasonable accommodations, which may include remote work, and must keep employee medical information confidential.

In addition, in the first court decision addressing the ability of an employer to require COVID-19 vaccinations,, a federal district court in Texas in [Bridges, et al v. Houston Methodist Hospital et al, Docket No. 4:21-cv-01774 \(S.D. Tex. Jun 01, 2021\)](#) upheld a hospital's mandatory COVID-19 vaccination policy for employees. The decision noted that employees "can freely choose to accept or refuse a COVID-19 vaccine; however, if [they] refuse, [they] will simply need to work somewhere else ... Every employment includes limits on the worker's behavior in exchange for his remuneration. This is all part of the bargain." The court cited the EEOC guidance opining that mandatory vaccination can be a condition of employment as long as reasonable accommodations are provided to employees with legitimate medical or religious reasons for not being vaccinated.

In light of these developments, health care employers should review their own internal policies, procedures, and safeguards and determine what additional steps need to be taken to comply with the requirements to protect their employees from being exposed to COVID-19. If you are considering requiring or incentivizing your employees to become vaccinated, be mindful of the possible accommodations and privacy concerns. Finally, the federal, state, and local guidance continues to evolve; it is important to stay up to date on developments.