

Publications

Expiration of OSHA's Healthcare ETS and Update on CMS Mandate

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CLIENT ALERT | 12.29.2021

After a week of uncertainty, the Occupational Safety and Health Administration (OSHA) has finally addressed the status of its Healthcare ETS. As discussed in last week's [Federal Vaccine Mandates End-of-Year Roundup](#), OSHA's Healthcare ETS was only effective for a six-month period, which came to an end on December 21, 2021.

On December 27, 2021, OSHA formally withdrew the ETS. Despite the expiration of the ETS, the agency urged healthcare providers to continue complying with the ETS while OSHA works toward issuing a final standard. [In its statement](#), OSHA announced that although many of the substantive requirements of the ETS are no longer active, the record-keeping portions of the ETS, which require healthcare providers with more than 10 employees to maintain a record of each time the employer learns an employee has tested positive for COVID-19, remain in effect.

Regardless of the standard's expiration, healthcare providers should note that they remain obligated to ensure a healthy and safe workplace under the OSHA general duty clause. OSHA explained that it intends to enforce its existing requirements, and that "continued adherence to the terms of the Healthcare ETS is the simplest way for employers in healthcare settings to ... ensure compliance with their OSH Act obligations."

Two major changes are likely to result from the expiration of the Healthcare ETS. First, OSHA confirmed that healthcare providers with more than 100 employees, who were previously exempt from the OSHA vaccine or test ETS due to coverage by the expired Healthcare ETS, are now required to comply with the vaccine or test ETS by the January 10, 2021 enforcement date. Second, the removal leave benefit requirements, which mandated employers to pay employees who missed work as a result of COVID-19 isolation, appear to no longer be in force following the expiration of the Healthcare ETS.

Additionally, the Centers for Medicaid and Medicare Services (CMS) announced on December 28 that it **will** begin the implementation process for its vaccination mandate in the 25 states where the mandate

is **not currently enjoined**. It is important to note that healthcare providers covered by CMS are **not** exempted from the requirements of the OSHA vaccine or test ETS. Accordingly, healthcare providers throughout the United States should continue their efforts to come into compliance with the OSHA vaccine or test ETS ahead of its January 10, 2021 initial deadline.

Stay tuned for further **Vorys Alerts** regarding the promulgation of a final rule for healthcare providers, for updates on OSHA's approach to enforcement under its other existing rules and regulations, and to monitor the status and enforcement of the CMS vaccine mandate.

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VORYS COVID-19 TASK FORCE

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