

SCHOOLS SHOULD NOT IGNORE OSHA'S NEW COVID-19 HEALTHCARE EMERGENCY TEMPORARY STANDARD

Insights
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Believing current federal standards and regulations were not doing enough to protect healthcare workers from COVID-19, federal workplace safety officials recently issued [a new Emergency Temporary Standard](#) – but many private schools will be surprised to know that it also applies to them. The new Emergency Temporary Standard (ETS) issued by the Occupational Safety and Health Administration (OSHA) requires covered employers to take various actions to minimize the risk of COVID-19. Despite its official name — COVID-19 Healthcare ETS — the scope of the new rule can, and likely does, apply to many private schools. Here is what your school should know about the ETS.

Does the ETS Apply to Schools?

The ETS applies to all settings where any employee licensed to provide healthcare services provides healthcare or healthcare support services. On its face, then, the ETS applies to schools with a clinic, healthcare facility, nurse's office, or other area where healthcare services are provided.

What Does the ETS Require?

The ETS requires a [wide range of safety and mitigation measures](#). One of its key provisions includes development of a written COVID-19 plan, which must include:

- A designated safety coordinator knowledgeable in infection control;

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- Policies and procedures to determine employees' vaccination status;
- The potential workplace hazards related to COVID-19; and
- Policies and procedures to minimize the risk of COVID-19 for each employee.

Significantly, employers must seek the input and involvement of non-managerial employees in the development and implementation of the plan.

Additionally, the ETS requires:

- A workplace hazard assessment of potential hazards related to COVID-19 (which must also have sought the input and involvement of non-managerial employees);
- Monitoring the areas where healthcare services are provided to ensure ongoing effectiveness of the plan;
- Minimization of the risk of transmission for each employee;
- Policies and procedures detailing how to minimize that risk in accordance with the CDC's Guidelines for Isolation Precautions;
- Monitoring points of entry;
- The wearing of face masks when indoors (with certain exceptions);
- Providing PPE and respirators;
- Assessment of HVAC systems;
- Daily screenings of all employees;
- Reasonable time off and paid leave to deal with vaccine-related issues;
- Employee training and education; and
- Maintenance of a COVID-19 log.

Are There Exemptions?

Despite its broad application, the ETS does not apply to the entire school campus. OSHA has clarified that the ETS takes

a “settings-based approach” and focuses on specific areas. The agency has specifically acknowledged that a school healthcare setting embedded within a facility is treated separately from the rest of the school. At most schools, this will be the nurse’s office or clinic.

Moreover, the ETS provides a specific exemption from the standard for non-hospital ambulatory care settings such as a school nurse’s office. The exemption would exclude the nurse or other healthcare provider in the following circumstances:

1. Where all *non-employees* (e.g., students, parents, visitors) are screened prior to entry; and
2. Where people with suspected or confirmed COVID-19 are not permitted to enter the nurse’s station or office.

To take advantage of this exemption, schools should strengthen and enforce their COVID-19 policies so that anyone entering the clinic or nurse’s office (students, employees, or other non-employees) is either precluded from entering or removed from the school when they have a suspected or confirmed case of COVID-19. If sufficiently policed, doing so will allow your school to be exempt from the OSHA regulation. This means that you should develop a policy that provides for screening of visitors (employees, students, and parents) prior to entry into the facility, and a policy to decline to admit to the clinic or healthcare facility symptomatic or COVID-positive students, employees, or other persons. Your school policy should detail how to handle such a student, employee, or other person if the situation arises. This may include having a separate isolation area away from the clinic, such as outside in a parent pick-up area, where a student or other person can wait until a guardian comes to take them to an independent healthcare facility.

Occasionally, a school nurse may have to provide healthcare services outside of the clinic (e.g., responding to a possible concussion on the P.E. field). In that scenario, the ETS states that it applies only to the *provision of services* by the provider. It does not mean the new *physical location* needs to comply with the ETS.

If your school chooses not to pursue a policy that would exempt your clinic or healthcare facility from the ETS, you would have to develop a written plan and take the other

actions required by the ETS to comply with the standard (as outlined above).

What Should Schools Do?

Before taking any action, you should carefully assess where healthcare services are being provided and adjust accordingly. The more your school limits where you provide healthcare services, the less widespread you will need to implement any measures. Where your school has a licensed nurse, you should initially determine if you can comply with the exemption provided for non-hospital health care settings. If so, you should develop procedures and policies to comply with the exemption. The ETS's exemption requirements are not burdensome for non-healthcare facilities and may only require modest adjustment of policies.

However, if your school is not exempted from the ETS, you should prepare a compliance plan and take all steps for your clinic or healthcare facility to comply with the ETS. Although the ETS requires many things, the most notable is the development of a written COVID-19 plan. Generally, such a plan requires you to designate a COVID-19 safety coordinator (which should be the school nurse, in most schools), develop workplace-specific hazard assessment, policies, and procedures on determining employee vaccination status, and communicate the risk of transmission to employees.

Conclusion

Fisher Phillips will continue to monitor further developments and OSHA guidance, so make sure you are subscribed to [Fisher Phillips Insight System](#) to gather the most up-to-date information. If you have any questions or need assistance developing a COVID-19 plan or related policies, you may contact your Fisher Phillips attorney, the authors of this Insight, or any member of the [Education Practice Group](#).