



What Employers Can Expect With the End of the COVID-19 Public Health Emergency: Your 6-Step Plan

Insights

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The COVID-19 national and public health emergencies officially end today with the expirations of two dual emergency declarations – so what should employers expect? One of the two declarations is the public health emergency (PHE) declared in January 2020 by the Department of Health and Human Services (HHS), and the second is the national emergency declaration issued in March 2020. The World Health Organization (WHO) also announced on May 5 that it is time to transition to long-term management of COVID-19 as an ongoing health concern versus an international public health emergency. While we anticipate that more guidance is coming from federal and state agencies as they roll back pandemic-era COVID-19 requirements and transition to sustainable long-term processes, here are the key changes you should be aware of – and a six-step plan for compliance.

Impact of the PHE Declarations and Expirations

Declaration of a public health emergency (PHE) provided the federal government with wide-ranging authority over several COVID-19-related areas, including providing Americans with tests, treatments, and vaccines at no charge. According to media reports, updates from the Centers of Disease Control, and the COVID-19 PHE Transition Roadmap from the HHS, the biggest impact of the end of PHE is that many Americans will have to start paying for COVID-19 testing and treatments after May 11.

Vaccination requirements will also end for federal workers, and pandemic-era vaccination requirements for international travelers are also being revoked.

What is Changing?

According to CDC guidance updated on May 5, the CDC has been working to fold COVID-19 emergency response activities into its existing structure and programs in order to transition from a health emergency standpoint to a sustainable health practice. While most of the COVID-19 tools like vaccines and treatments will remain available, some COVID-19 related products and services will no longer be provided free of charge or be covered by insurance.

Among other changes, the CDC's update and a fact sheet from HHS report key takeaways:

- Insurance providers will no longer be required to waive costs or provide free COVID-19 tests. Americans with private insurance could be billed for laboratory tests after May 11, even if they are ordered by a provider.
- Current access to free over-the-counter COVID-19 tests for Medicare beneficiaries will end. However, those enrolled in Medicare Part B will continue to have coverage for laboratory-conducted COVID-19 tests when ordered by a provider.
- State Medicaid programs must provide coverage without cost-sharing for testing until September 30, 2024. After that date, coverage may vary by state.
- While vaccines will continue to be free of charge for those with private insurance who use in-network providers, patients seeing out-of-network providers could be charged for vaccines.
- While the CDC [reports](#) that medications to prevent severe COVID-19, such as Paxlovid, will remain available for free “while supplies last,” the price will be determined by the manufacturer and health insurance coverage after the Strategic National Stockpiles are depleted.
- As reported by [Forbes](#) and [CNN](#), the CDC will cease reporting COVID-19 community levels.
- Laboratories are no longer required to report COVID-19 test positivity data after May 11. However, hospital data reporting will continue as required by the Centers for Medicare and Medicaid Services (CMS) through April 30, 2024.
- Emergency authority waivers and regulations used by CMS to expand healthcare facility capacity will end. These waivers were used during the PHE to expand healthcare facility capacity due to the heightened strain created by COVID-19.

Several other measures put in place in reaction to the COVID-19 pandemic will cease, including:

- According to a [White House Briefing Room Report](#) from May 1, the Biden Administration will end COVID-19 vaccination requirements at the end of the day on May 11 for federal employees, federal contractors, international travelers, head start educators, and CMS-certified facilities.
- The above report was followed by President Biden’s [Proclamation on Revoking the Air Travel COVID-19 Vaccination Requirement](#) on May 9, 2023. President Biden announced in this Proclamation that the international air travel policy relying primarily on vaccinations was no longer needed. The revocation is effective at 12:01 a.m. on May 12, 2023.
- Numerous [media reports](#) have covered the surge of migrants at the US-Mexico border this week as the pandemic-era border restriction known as Title 42 expires. The policy allowed the US government to turn away certain migrants at the border, originally with the aim of stopping the spread of COVID-19.

At the state level, the end of the PHE will also trigger some changes. Some states, like Colorado, have required employers to provide an additional amount of paid sick leave during the COVID-19 public health emergency in an amount based on the number of hours the employee works. That requirement will soon come to an end.

In other states such as California, the expiration of the PHE will not make much difference. [California has a new non-emergency COVID-19 regulation](#) that took effect on February 3 and will be in effect for two years.

What Will Remain?

Updates from [HHS.gov](#) note that the Administration's continued response to COVID-19 is not fully dependent on the expiration of the PHE. There will still be pathways for emergency use authorizations (EUAs) for COVID-19 products (tests, vaccines, and treatments) through the Food and Drug Administration (FDA), and major telehealth flexibilities will continue to exist for those participating in Medicare or Medicaid.

The FDA can still continue to issue new EUAs when criteria for issuance are met. Major telehealth flexibilities will continue for those participating in Medicare and Medicaid. COVID-19 vaccines will still be free for those with insurance even when the PHE ends because of various federal laws, including the Affordable Care Act, that are independent of the PHE expiration. The [CDC](#) also confirmed that wastewater surveillance and genomic surveillance will remain in place.

Workplace Safety Standards Not Yet Addressed

There have been no COVID-19 recent guidance updates from the Occupational Safety and Health Administration (OSHA) related to the expiration of the COVID-19 PHE. In January 2021, the agency issued [guidance](#) designed to help employers protect unvaccinated and other "at risk" workers. As of the date of publication, [OSHA's guidance](#) had not been updated since August 13, 2021.

Similarly, OSHA has not updated its [Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#) or its summary of [COVID-19 regulations](#) since July 2021. This means that COVID-19 can still be a recordable illness on OSHA 300 logs mandated by 29 CFR Part 1904 if a worker is infected as a result of performing their work-related duties, and other recording criteria are met. See [OSHA's Injury and Illness Recordkeeping and Reporting Requirements](#) for a summary of recording criteria.

Though OSHA has been silent on any plans to update its COVID-19-related requirements and guidance, it has signaled on its [COVID-19 resource website](#) that updates are coming soon to [guidance for mitigating the spread of COVID-19 in the workplace](#). We will continue to monitor OSHA's reaction and provide updates as they become available.

What Should You Do?

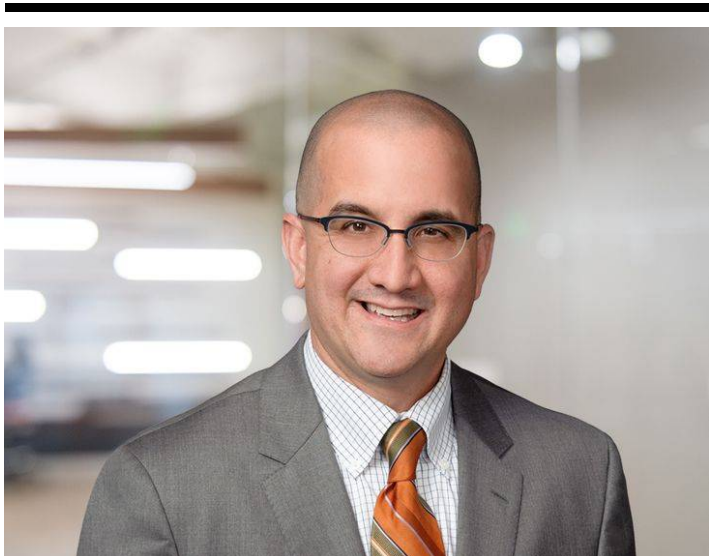
1. Stay abreast of any COVID-19 updates in the jurisdictions in which you operate. Though some states conditioned their COVID-19 requirements on the federal PHE, some state and local governments have adopted provisions that are more strict than federal COVID-19 policies, especially in the healthcare setting, and many of these are independent of the PHE expiration.

2. Remember that there is still a need to be vigilant in your workplace to mitigate the spread of COVID-19 and other illnesses. Even with the expiration of the PHE, OSHA will still look to the general duty clause and general standards, including Personal Protective Equipment (PPE) and Respiratory Protection Standards, for enforcement regarding the hazards of COVID-19.
3. Continue to follow OSHA's recordkeeping guidance regarding COVID-19. Reach out to your Fisher Phillips attorney with questions about work-relatedness and recordability of COVID-19 infections.
4. Watch CDC and OSHA website links provided in this Insight for updates on COVID-19 guidance.
5. Continue to periodically review and update your COVID-19 procedures to ensure that they reflect current federal, state, and local guidance on COVID-19. It is also important to review your COVID-19-related sick leave laws to ensure that you are not relying on outdated information.
6. Consider potential interplay between COVID-19 and other employment laws. Under the Americans with Disabilities Act (ADA), employers are required to engage in the interactive process with employees who seek a medical accommodation, which extends to long COVID. The Equal Employment Opportunity Commission (EEOC) has issued [guidance](#) about the interplay between COVID-19, the ADA, and other EEO laws. The EEOC also consolidated resources [here](#) on COVID-19 and its relation to EEO laws.

Conclusion

We will continue to monitor further developments and provide updates as they arise, so be sure to subscribe to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or the authors of this Insight.

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