



OSHA to Propose New COVID Healthcare Standard

January 28, 2022

OSHA expects to finalize a permanent COVID-19 Healthcare Standard within 6 to 9 months - unless ordered by a Court to do so sooner. Summarized below is how we got to this point – the expiration of the emergency temporary standard (ETS), OSHA’s failure to issue a permanent rule and the pending litigation. OSHA has not indicated whether it intends to reinstate the ETS as a final rule or develop something new.

Initial ETS for Healthcare Workers Expired

OSHA’s six-month ETS for healthcare workers expired on December 21, 2021 and was officially withdrawn on December 28, 2021. Click [here](#) for the notice. The reporting provisions there were adopted under a separate provision remain in effect and OSHA stated that it would vigorously enforce its general standards, including the Personal Protective Equipment (PPE) and Respiratory Protection Standards, to help protect healthcare employees.

OSHA Promises New Final Rule

Following the US Supreme Court’s decision to stay the broader Vaccination and Testing ETS for employers with 100+ employees, OSHA announced it would refocus its resources on a COVID-19 standard for health care workers.

In a statement posted to its website on January 25, OSHA states

Although OSHA is withdrawing the vaccination and testing ETS as an enforceable emergency temporary standard, the agency is not withdrawing the ETS as a proposed rule. The agency is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard.

Labor Unions File Lawsuit Demanding New Health Care Standard

OSHA is defending the expiration of the health care ETS without a final rule in litigation brought by six national unions in the U.S. Court of Appeals for the District of Columbia. Click [here](#) for the lawsuit. The unions asked the Court to issue a writ of mandamus to require OSHA to produce a final permanent standard for health care workers within 30 days of the Court’s order. The unions also ask the Court to require OSHA to reinstate the expired ETS as an interim measure. In its reply, OSHA argues that it will prioritize its resources to focus on finalizing a permanent Healthcare Standard and anticipates that it will be able to complete rulemaking six to nine months. Oral arguments have not yet been scheduled.

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