

## Compliance Today – November 2021

# The labor and employment perspective on OSHA's Emergency Temporary Standard for healthcare employers

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When the Occupational Safety and Health Administration (OSHA) released its broad Emergency Temporary Standard (ETS) on June 10,<sup>[1]</sup> the healthcare community scrambled to implement the safety requirements identified in the ETS to mitigate the spread of COVID-19 in the workplace. Notably, the ETS requires healthcare employers with more than 10 employees to take additional steps to protect their workers in settings where suspected or confirmed COVID-19 patients are treated, such as paying its employees when they are on medical removal leave pursuant to the Temporary Standard medical removal pay (MRP) requirements. The MRP imposes a financial burden on the healthcare employer, and an employer's failure to comply may lead to dire consequences.

### Employees eligible for MRP under ETS

All healthcare providers that employ more than 10 employees must immediately remove an employee and place them on medical removal leave when:

- The employee is COVID-19 positive (i.e., they have a confirmed positive test for or have been diagnosed by a licensed healthcare provider with COVID-19);
- The employee has been told by a licensed healthcare provider that they are suspected to have COVID-19;
- The employee is experiencing recent loss of taste and/or smell with no other explanation; or
- The employee is experiencing both a fever of at least 100.4°F and new unexplained cough associated with shortness of breath.

This list represents the minimum medical removal requirements for compliance with OSHA's COVID-19 ETS. The full list of COVID-19 symptoms provided by the Centers for Disease Control and Prevention<sup>[2]</sup> includes additional symptoms not listed above. Further, additional studies and reports reveal that COVID-19-positive patients who have contracted the Delta variant or breakthrough COVID-19 infection may experience symptoms different than those originally connected to COVID-19 at the onset of the outbreak in early to mid-2020.<sup>[3]</sup> Employers may choose to remove or test employees with additional symptoms from the Centers for Disease Control and Prevention list or refer the employees to a healthcare provider.

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