

Final Steps of OSHA's Proposed Permanent COVID-19 Standard for Healthcare

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The Occupational Safety and Health Administration's (OSHA) COVID-19 rulemaking process has been quiet for a while, but recent activity appears to indicate we are now entering the final phase of a permanent COVID-19 standard for healthcare. On December 7, 2022, the agency [submitted a final rule](#) to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for review.

As a reminder, in June of 2021, OSHA implemented an [emergency temporary standard for medical facilities](#), which mandated those sites follow requirements around personal protective equipment, ventilation, physical barriers and other protections to reduce the spread of COVID-19. Eventually, the agency withdrew the rule in December 2021, stating that it was [working expeditiously](#) to issue a final standard while also considering its broader infectious disease rulemaking.

OSHA's public hearing for the rulemaking was held from April 27, 2022 to May 2, 2022, and since then we have been waiting. However, on December 7, 2022, the OMB updated its website to reflect that it officially has OSHA's "Occupational Exposure to COVID-19 in Healthcare Settings" standard listed as "under review."

OSHA's permanent standard would fill the void left from other agencies like the U.S. Centers for Disease Control and Prevention (CDC), which in the last several months has diluted its COVID-19 recommendations. The messaging from these relaxed recommendations was amplified in the fall when President Biden publicly declared that the pandemic was over in the weeks before the midterm elections. Overall, OSHA's self-imposed expeditious timeline seemed to be out of place in an environment that was less concerned about regulating COVID-19.

However, OSHA's delayed delivery of the rule to OMB was arguably intentionally scheduled, as it falls squarely within a time frame during which we have been hearing about so many more COVID-19 cases than we have heard about for months. It has been a pattern for the last few years that in the winter months we see a substantial uptick in airborne respiratory diseases, like influenza, the common cold, and COVID-19. With respect to COVID-19, the annual uptick is followed by more stringent CDC recommendations. OSHA's December 2022 delivery is likely betting that the pattern

will remain the same and the proposed permanent standard will be reviewed in an environment with COVID-19 concerns at their peak.

While the timing of the delivery may be noteworthy, it is the contents of the final standard along with its issuance date that are the big-ticket questions. As to the text of the proposed regulation, we currently do not have much information as it has not been released. However, we can glean some insight if we assume the standard follows the outline of the [healthcare emergency temporary standard \(ETS\)](#) without any changes. If that is the case, then we can expect it to require covered employers to have comprehensive, top-to-bottom, infection protection programs, which would be required to cover, among other things, hazard assessments, screening requirements, personal protective equipment (PPE), physical distancing, physical barriers, cleaning and disinfection, ventilation, notification of COVID-19 cases, return to work, training, etc. It is doubtful that OSHA includes all of the features from the healthcare ETS. Admittedly, the environment of COVID-19 in the workplace in June of 2021 looked very different than today's. Overall, this rulemaking is moving closer to a finished product but will pass through a few more stages before it is issued.

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