

Vacheria Tutson (00:00:01):

Thank you all for joining us today. I'm very excited to get into this content as I know we've received a lot of questions and a lot of uncertainty about OSHA's new Emergency Temporary Standard. Like I said, my name is Vacheria Tutson. I'm the Director of Regulatory Affairs here at NACH. And we have the pleasure of our colleagues at Feldesman Tucker joining us today and Dianne Pledgie will be also walking you through some content later today. Next slide please.

So just to give an overview, we will have an update from our Chief Medical Officer, Dr. Ron Yee. And next and we'll get into an overview of the standard, the hazard assessment, training employees, PTO, and also related CDC guidelines, and patient and employee screening. Additionally, we'll get into some of the enforcement pieces and what does it mean for your health center. And then hopefully we'll be able to end with Q&A if we have enough time.

So now, I'm going to turn it over to Dr. Yee and he'll give a message. Thank you.

Dr. Ron Yee (00:01:02):

Thanks, Vacheria, and welcome and thank you all for joining us today. We're so glad to have this time together and I want to thank our colleagues at Feldesman Tucker Leifer Fidell for joining us. I want to thank you all first for being on the front lines of primary care in our health centers and for your part to responding to this pandemic over the last 18 months. Health centers have really stepped and continue to be front and center by the White House, Congress, and everybody as part of the solution and response to this pandemic.

So I want you to know right off the top that we're with you every step of the way and want to support you in any way we can. So though we're really fatigued and worn down from this continuous and ongoing COVID response and now dealing with the Delta variant, we wanted to make sure we provided the information resources including those in our health center resource clearinghouse and the dialog necessary to address OSHA's COVID Emergency Temporary Standard and how it might affect your specific health center. So we know there's a continuum of health centers across the nation with differences in geography, population served, instants of COVID and now the Delta variant and how each of your board of directors and health center leadership are approaching this Emergency Temporary Standard.

While we don't want to cause any alarm in the field, we felt it was necessary and really responsible to serve our health centers by providing the resources and presenting information including a real transparent discussion regarding possible legal ramifications led by our legal experts at FTLF with health centers across this nation so that you can make informed decisions of how you, your boards, and leadership will address the OSHA COVID Emergency Temporary Standard. I know you all got this, I'm not going to go into a lot of details where we stand. You know where we are with the Delta variant and where we are at each of our health centers depending on your geography and where the incidents of COVID in your area. So I know you got this. I know you will continue to respond appropriately to meet the needs of your staff and communities. I want to just encourage you to stay strong and safe in the fight for our health center communities and thank you for joining us today. And I know you'll be glad you attended today. Thank you and I'll turn this back over to Vacheria.

Vacheria Tutson (00:03:24):

Thank you, Ron, and I echo your concerns and echo what you said that we know that our health centers will continue to do the great work that they have been doing. So to just give an overview of the COVID-19 Emergency Temporary Standard, it was published June 21st, but it went into effect July 6th. And so

the purpose of this standard was really to protect employees in healthcare settings. So as a health center, you are an employer and you have the responsibility to protect your employees especially from exposure to the COVID-19 virus. And so as we talk about all the considerations that you should think about, just think about the employer/employee relationship and in keeping your employees safe like you have been doing throughout the pandemic but just remembering that the fight is not over and now that this Emergency Temporary Standard has been released there's just certain things that you might want to pay more attention to but is definitely based on your health center and what you have going on in your community.

So first, I do want to just say that OSHA's acting director did confirm with me that this Emergency Temporary Standard does apply to health centers. And I know that there has been a lot of questions about if we are exempt or not and we will definitely get into later in the webinar if your employees are vaccinated, will this Emergency Temporary Standard change on how it relates to you. But however, for the health center broadly, it does apply. And so one distinction that I know I've heard a lot is about testing and whether you test inside of your building, outside in a parking lot or a tent, the Emergency Temporary Standard does apply to you and that's simply because of the way the virus is transmitted. OSHA treats the regulation the same way whether you're performing services in your health center or outside and so that's important to keep in mind because of how the virus is exposed and transmitted.

So compliance right now is in a discretionary enforcement and so that means that technically some of the aspects of the ETS went into effect or had a compliance deadline by July 21st. However, OSHA had the discretionary approach meaning that they're evaluating if you, as an employer or health center, is making a good faith effort to comply. Are you in evaluation stage? Have you conducted your hazard assessment? So if you are taking steps in the right direction, I think OSHA will be more lenient in just giving you the time but making sure you are taking those steps. And as we don't have a set timeline on this discretionary enforcement time period, I think taking into consideration the things we're bringing up today and making efforts to meet those requirements or to make the changes in your health center will demonstrate that you are making a good faith effort.

I also want to just recognize that the Emergency Temporary Standard also discusses that there has been a lot of funding funneled down to the healthcare services and healthcare providers and to use that funding to maybe build in more capacity to meet some of these requirements. So we know that there's ARPA funding, there is the HAF funding, but then there's also funding that went to your state and local government. There's \$350 billion that was administered by the Department of Treasury and it has specific goals for states and local governments to work with healthcare providers to be able to provide premium pay, to be able to make adjustments to their facilities, maybe you need a new HVAC or you wanted to build separate waiting rooms. You can work with your state and local government to fund the projects that you need. So also keep in mind that even if you don't have all the employees you might need or all the resources, there has been additional funding opportunities that you could work with to be able to build out your capacity and meet the requirements of the ETS.

Next slide. So one of the first things to be aware of is that you need to conduct a hazard assessment. And that will inform the COVID-19 plan that you will need to either have written, depending if you have 10 employees. And so this assessment is really to think about how your employees will be exposed or could be exposed to COVID-19 while conducting normal business. And so this hazard assessment informs that plan and then you will have to make sure you communicate that plan to your employees. And so as you're hearing the different parts that we discuss today, think about how this applies to your health center. You have been doing some of the things already, you probably have some of these procedures in place already but knowing that we are tired and we are sick of living in this COVID

world there might be some things that you need to revisit or restart or revamp to make sure you're complying with the ETS. And so one of those things are is making sure you have a safety coordinator.

Next slide. And so your safety plan coordinator really is making sure that you are following the COVID-19 plan that you put together, making sure that it's effective and is meeting the needs of your employees but also making sure that you're staying up to date with new requirements maybe from the CDC or infection control and being equipped with that information and also the skillset to make the adjustments that are needed.

Next slide. So when you get to the part of after you conducted your hazard assessment and it's time to put out your COVID-19 plan, these are some of the aspects that you might cover. Patient screening and management, standard transmission based precautions, PPE, physical distancing, physical barriers, cleaning, ventilation, screening of also your employees, vaccinations, trainings. OSHA has a really great template online. We are going to circulate a resource PDF for you that has a lot of resources from our health center clearinghouse as well from the OSHA website. And so this COVID-19 template plan that OSHA has is very thorough and so don't feel like you might need to complete every single page but use it as a guide to help you maybe guide your hazard assessment or make sure you're just checking all the boxes. You could've forgot about something and so it's a really great template to work from but don't feel like you have to be tied to it.

And so I think it's also important, keep in mind, that a lot of the requirements do mirror CDC requirements. I do want to stress that you might be doing some of these things and so it's really just a matter of also as you're doing your hazard assessment is also seeing what do you actually have in place already and then what needs to be taken next.

Next slide. And so PPE is a big part of the ETS, however, [inaudible 00:10:05] under PPE is something we've been dealing with the entire pandemic. And so employers do have a requirement to provide PPE and to make sure that's available to their employees as well as ensuring that people are wearing their face masks. However, there are exceptions to that. Are you alone in a room? Are you eating? Are you part of a Respiratory Protection Program? I'm going to turn it over to Dianne who can dig a little bit deeper into the PPE and when does it not apply to fully vaccinated employees because I think that's a question that a lot of you all have.

Dianne ([00:10:39](#)):

Right. Thanks Vacheria. And I'm reminded when I was looking at the list of items to be included in the COVID-19 plan how OSHA really talks about this standard as building a multilayered approach to protecting employees and so that's why we see these broad expectations related to you got to have physical distancing, the PPE, all of these things in that it's by having these layers in place that an employer best protects their employees. Same with the PPE expectations here under the Emergency Temporary Standard.

In the regulation, you'll see that OSHA says you may have PPE requirements already under the Standards and Transmission-Based Precautions that you've already implemented for other parts of your OSHA compliance not specific to responding to COVID-19. So you may already have those process in place and expectations for your employees but then specifically for protecting employees related to COVID-19, the covered employers have to provide and ensure that employees wear face masks. And as Vacheria said, there are some exceptions that are listed here on this slide to that expectation that employees will wear face masks, for example, if someone is alone in a room or if they're eating or drinking as long as there's still the distancing in place there. If the employee is required to wear a respiratory protection, then they don't also have to wear a face mask. And if there's a reason why that employee can't wear a face mask because of as you've heard us talk about before if there's a ADA

reason why the person can't wear a face mask because they have a disability or they have a religious belief that prohibits them from wearing a face mask then the Emergency Temporary Standard recognizes that.

So in general, covered employees should be provided by their employer with face masks and there's details in the regulation around the types of face masks making sure that they're enough face masks available for employees.

Then on the next slide, you'll see we talk about, we've pulled out the sections related to the requirements for employers to provide respirators and other PPE. This is specific for employees with exposure to people with suspected or confirmed COVID-19. So here, exposure refers to close proximity which includes being within six feet of an individual or in the same room as an individual or space suspected or confirmed to have COVID-19. So in the comments to the Emergency Temporary Standard, OSHA says that employers should always anticipate that a personnel who are directly involved in patient care, those patients with either suspected or confirmed COVID-19 those staff members who are providing that care, employers should anticipate that they have exposure to COVID-19 and that those employees should be provided with a respirator and other appropriate PPE in order to protect them.

There are different standards for respirators under the OSHA COVID-19 Emergency Temporary Standard. So those employees who are providing care to patients, direct patient care, the provision of those respirators the rules that are going to apply there are OSHA's Respiratory Protection Standard. That existed before the Emergency Temporary Standard. It requires that you have a written plan, it requires FIT testing, it requires ensuring that employees can medically wear a respirator. So they're under that same standard that OSHA has had in place for years in terms of the employer's obligation to provide the respirator to meet all of those standards related to providing a respirator. So those employees would be underneath those requirements. Then, employees who participate in aerosol-generated procedures on patients who are suspected or confirmed to have COVID-19, there are also respirator requirements and those fall under the OSHA Respiratory Protection Standards that have been around before.

However, there is some flexibility under the OSHA Emergency Temporary Standard where OSHA has said if you an an employer have certain employees who would be required to wear a face mask, however, you want to go above and beyond as an employer and you want to offer those employees a respirator and you're going to provide that respirator, we're not going to push you into that other respiratory protection standard that has existed before. You don't have to meet all of those requirements. Instead, when you provide those respirators, you will be under what is known as the Mini Respiratory Protection Program. Really, that means it should be less burdensome on the employer because you're going above and beyond for those employees in saying, "Yes, technically we only have to provide you with a face mask, however, we're going to provide this additional protection for certain employees or house employees who are in and out of the patient waiting room or some other waive determines or your hazard assessment, which Vacheria mentioned that these employees perhaps could benefit from the additional protections of respirator."

The other respirator implications under the Emergency Temporary Standard are where you have an employee in the health center who wants to wear and has purchased and brings in their own respirator to wear during work even though it's not required based upon their position that they have that respirator, they themselves are going to do that personally then that employee's use of that respirator even though you as the health center didn't provide it and it's not technically required under the Emergency Temporary Standard, the employer still has to meet certain requirements under that Mini Respiratory Protection Program. So providing some warnings to those staff members about how to use and clean and maintain their respirator. So a lot of moving pieces here around providing respirators

to employees where you are required to, first those buckets, then where you decide to step up and be more generous in providing respirators to certain staff members and then when you have staff members who determine that they are going to bring in their own respirator to the workplace.

Next slide please. So as Vacheria mentioned, there is an exemption under the Emergency Temporary Standard for fully vaccinated employees from the requirements related to PPE, so masks and respirators, from the physical distancing requirements, and the physical barrier requirements under the ETS. When those employees are in well-defined areas of the entity where there is no reasonable expectation that any person is suspected or confirmed COVID-19 will be present. So this exception does not apply to areas where you are providing patient care. It might apply, for example, in the finance department. And thinking of my health center that I worked at where yes, we had to walk through the waiting room to get back to the admin offices but once you were back there then the finance team was on the third floor at the end of the hallway, they had a door that closed. It was totally separate, controlled access to who was in and out there.

So in that type of a situation where you have that well-defined area and there's no reasonable expectation that any person was suspected or confirmed COVID-19 will be present because you have to have a badge to get back there, patients don't come to meet with that finance team, outsiders rarely if ever come to meet with that finance team. In that type of a well-defined area, then the requirements related to mask wearing, physical distancing, and physical barriers there is an exemption under the Emergency Temporary Standard. So part of what you're doing in the hazard assessment that Vacheria mentioned is trying to identify in your health center are there any of these well-defined areas. What areas fit within this so that you might offer flexibility to your employees when they are in those areas, certain break rooms, certain meeting rooms, certain departments, things like that. So in that hazard assessment when you're doing that, you're trying to identify those different spaces where this exemption might apply and then you can also use that, I think, in talking with employees and say so long as all employees are fully vaccinated who are in these spaces then we can relax some of these standards that come to us under the OSHA Emergency Temporary Standard.

And this could be a motivating factor to encourage employees to get vaccinated. And the Emergency Temporary Standard standard does recognize that in order to take advantage of this, first of all, you're assessing whether it applies during that hazard assessment but then also you have to have in that COVID-19 plan that Vacheria mentioned the policies and procedures about how you're going to determine employee's vaccination status. And with that, come all of the requirements under the ADA to protect that information, all of the understanding that you have to have about the exemptions that apply, all of those pieces. But from the OSHA COVID-19 Emergency Temporary Standard perspective, you want to have it documented in the hazard assessment that you identified this as a well-defined area, only vaccinated employees are going to be there, very low risk of someone with COVID-19 accessing that area, and that you have a way that you are getting that detail about employees being vaccinated.

Next slide I think is going to pass to Vacheria to talk more about employee training and the expectations under the Emergency Temporary Standard. Vacheria.

Vacheria Tutson ([00:21:41](#)):

Thank you, Dianne. And so I do just want to revisit, because I got a chance to look at some of the questions. So the Emergency Temporary Standard applies to health centers because even if you looked at the flow chart that OSHA published, there are still more requirements that fall under this regulation than what is captured in the flow chart. And so why we say that this Emergency Temporary Standard applies to health centers, OSHA's acting director said that it applies to health centers. And then also,

health centers have an obligation under the Health Center Program to not deny care to patients. And so even though you are screening patients before they come in, you have to remember that there are some COVID symptoms that might not actually lend to that person having COVID but if we are in a habit of denying every single patient that might screen for one or two symptoms you might run afoul with your health center program obligation.

And so it really is a balancing act of determining what works best for your health center but also remembering your grantee requirements and what does it mean for you serving your community. And so as there are different aspects of how this ETS applies to your health center and when it applies to your health center, I think it's just important to keep in mind that if you are going to defer to how this applies to you, you'd be better on the side of being overly cautious than to not take the steps to protect your employees. So with that in mind, I know that it is a heavy lift and like Dr. Yee said we know that folks are burnt out and that you're tired and that COVID has lasted longer than I think all of us would like it to. We do want you to keep your employees safe, keep your patients safe, keep your community safe by following the recommendations and implementing the right policies and protocols to follow the Emergency Temporary Standard.

And so to elaborate on what Dianne's saying, once you get this COVID-19 plan, once you've completed your hazard assessment, the next step is to train your employees. And that involves training them on what is in the COVID-19 plan, what is going to be implemented? When are those things going to be implemented? And then also how does it impact your employees? At the same time that you are letting them know how you will start screening patients and how you will start screening employees daily or anyone who's entering the building, it's important that you let them know what resources are available to them and what the Emergency Temporary Standard grants to them because it's also important to keep in mind that this regulation came out to protect employees. If you want to know what protections they have and the steps that you're taking as their employer to protect their safety from COVID-19 and exposure to the virus.

And as well when we're talking about benefits for employees, it's important to remind them of the things that you had to protect their well-being before COVID. So if your health center provides mental health services, if your health center maybe implemented different COVID leave or sick leave, remind them of the benefits that you have at your health center to keep them healthy, to keep them happy, or if they are experiencing a family member has COVID, what benefits do you have for them to be able to take time off to maybe care for a sick child or a sick parent. Those are things that are important to build morale but also to let them know that holistically you are there looking out for your employees and their whole being and it's important to let them know the scope of benefits and protocols and protections you're taking during this time and during the pandemic. Next slide.

Dianne ([00:21:41](#)):

Vacheria?

Vacheria Tutson ([00:25:20](#)):

Oh yes.

Dianne ([00:25:20](#)):

Vacheria, I think to what we've been trying to say through is how does this fit into the other things that the health center who have already done or you are already also required to do for other purposes. So to the degree you are doing risk management trainings and you have covered some of the topics that

are required to be trained on under the OSHA Emergency Temporary Standard, you can get credit for that. It says that in the comments to the ETS that if you've done these trainings recently on all of these different prongs of the regulation, take credit for what you have done so far in your ability to respond on your feet and do this and put it into place.

But also to the degree you can fold it into the requirements under the emergency preparedness rule or risk management trainings that you're already doing and launching so that you can wrap them all in so that it doesn't feel like this is yet another thing that's happening. So I think we have to remind ourselves many of you have a lot of these things already happening and what we want to do is organize it under the umbrella of how I respond if an employee did complain to OSHA about us meeting this Emergency Temporary Standard. So you may be referencing policies and procedures and trainings that happened in April of 2021, pulling that together. And like you're saying, it is a lift, it takes some time to think about that. But get credit for what you've done, which is a lot of this just in different pockets and then you can identify, for example, what of the training expectations still need to be met.

And then like you were saying, prioritize that through the next couple of months that those are the trainings you're going to roll out, see what your learning management system already has available and can offer. Think about the other ways you can be doing the training in terms of in person or in group meetings or by Zoom, all of those things so that you can tick off as many of these boxes as possible given what you've already done and then folding it into the practice going forward because part of what could happen, it's a temporary standard for right now but OSHA is considering making this a permanent standard much like the bloodborne pathogen requirements under OSHA. I don't know, it doesn't feel like it's going anywhere to me. It's probably going to be here for a while. And so trying to build it into the cycle of what the health center is doing already, I think helps make this feel a little less overwhelming.

Vacheria Tutson (00:28:02):

Right. And I completely agree. And then there's also an element of letting your employees know that things could change. So we might have another training if the COVID rates are going down and we might have the flexibility because we have more employees that are vaccinated. Also, let your employees know that we might have additional trainings and to let you know what protocols might be changed or things that could happen down the road so keep that flexibility in mind as well as that there could be hope on the other side of as things get better, we might amend this or we might amend that. And so I think that's important to keep in mind to let your employees know that this is an evolving process and that things might change but that you as their employer will continue to keep them educated and in the loop as things change in your health center.

And so another important aspect that definitely falls under the COVID-19 plan is patient screening. And so I think everybody has done the temperature check going inside of all places and filled out the paperwork of do you feel this today, do you have a fever, can you smell? But these things are really important so this is something also your COVID-19 safety coordinator ensures is happening at the door. You think about patients, but it's anyone who's walking in the door of your health center. There is a different standard when it comes to employees but when you're thinking of patients, of neighborhood residents, of delivery people, maybe just a visitor, anyone who's walking through the door you want to make sure you have a process to screen and triage those patients. If you need a designated person or if you don't think your staff has capacity, this is where those additional COVID dollars can come into play where you can hire someone, maybe you can outsource to a company. There's plenty of COVID-specific testing, all types of services that have been developed.

And so if you need to contract out to be able to make sure that your front desk staff can just focus on their job and not screening patients, those are things that you could weigh in this process as

you're deciding how to implement the requirements. Do you want to just point out though that it is required to screen patients before they are entering the facility and so there are a variety of ways, I'm sure, that health centers are approaching this and there's best practices. And so some of the resources that we will share today after the call has links to where you can see best practices for screening and how to set up that workflow to work best for your employees. And so we want to give you those resources so you can figure out the best way to supply to your health center.

Next slide please. And so thinking about your requirements as an employer and to protect your employees, employers must screen each employee every day for work and in between shifts for COVID-19 symptoms. And it seems like it's up to you or it is up to your health center on if you are requiring testing. We know that there's a lot of conversation right now about mandating the vaccine or how do you require testing. So testing could be implemented or incorporated into how you screen your employees. Once again, I think that is a health center specific question of how you would like to make sure you're triaging and managing how your employees are vaccinated or how they interact with your patients. But also, it's important to know and to let your employees know in training that they have a duty and obligation to notify you as the employer if they have tested positive for COVID or if they went to the doctor and the test results haven't come back yet but the doctor feels like they might have COVID-19.

Additionally, if they have the symptoms that are [inaudible 00:31:59] tales if you have COVID, if you lost taste or smell or you're running a fever. Your employee has the obligation to let you know that and so you also want to make sure that is clear. And any trainings that you do, any COVID-19 plans whether you keep something posted in the break room to make sure employees are reminded of the process they need to go through if they feel like they've been exposed to COVID or if they are tested positive COVID, you want to make sure that is very clear so employees know that they also have a duty to you to protect the health center, patients, their other employees and colleagues, and also as a health center to protect their employees.

Next slide. The next two slides really get into detail of the obligation of an employer. When an employee tests positive for COVID-19, you do have to let other employees know and if they have come in contact with other people, could be other patients, vendors, contractors but to let all those folks know within 24 hours if someone has tested positive for COVID-19 who was in the health center and could've been exposed to them. And so it is important that there is a caveat to this, which is let's say that you have an employee who all day was testing patients outside in the parking lot, that person if it comes to find out that someone they tested, tested positive for COVID-19, that would not trigger the same notification requirement because they knew that they might come in contact with someone who tests positive if they were the person collecting samples and engaging with people through a drive-up clinic or however you are testing. If the standard of how to notify employees changes depending on the circumstance, so it's really important to review that information.

Next slide.

Dianne ([00:33:51](#)):

Vacheria, I was just thinking about how you said [inaudible 00:33:55] will be super in the leads or the notice that goes through different individuals when they're either in close proximity and close contact or if they're on the same floor or at the same site, those different notices that go out to folks. And I think especially the last slide that you had up is something where you can take your process right now for notifying when there is a positive COVID person who's been in the health center like, "What are you doing right now?", and you can build in these other pieces related to the notice that goes to employees who were in close contact.

But you'll notice that it applies to employees who were not wearing a respirator or the other required PPE. So do you have employees who are wearing the required PPE and/or the respirator or what was required? Then, there's not a notice requirement so this shouldn't be this huge lift if your employees are, and you as an employer, are providing appropriate PPE for employees and that the notice is different if there's been close contact, as you were saying Vacheria, to really review these pieces too and how you determine that versus just having somebody who was present in the same space, in the same part of the workplace.

And we've gotten some questions like, "Do you think this is going, all of this is going to survive? What do you think will be rolled back?" I think that notice, the second one that was here of having to provide a notice to everybody who was in the same site regardless of whether there was close contact or not. I think that might be something where we should maybe will be found to have done a little bit of an overreach in terms of notice because they say, "Well, it's just good to remind employees to be aware of that there are COVID positive individuals in the healthcare setting and things like that." And when I was reading those comments, I was like, "I don't know if I will survive a level of scrutiny around this."

And then also to the degree your health center shares the space or has other employers who have employees in your space, which I know that's the way a lot of health centers provide care and work with other community organizations, there's a notice requirement to the other employers which I think is new and was a big focus of why OSHA put out this Emergency Temporary Standard was because they realized that there could be employees who are in the space but who actually have different employers. And so thinking about your responsibility health center to notify the other employers that someone in your space has tested positive for COVID so that that employer then has that information and can pass that information to their employees. I'm thinking just walking into a health center if you were security staff or staffed by an outside organization, your front desk staff, your folks who were there and not actually employees of the health center and there is a person who comes into the health center who tests positive for COVID after the fact, notifying that employer so that they can let the security personnel know that there has been a person with COVID into the site or things like that.

This is real weedy.

Vacheria Tutson ([00:37:23](#)):

It is. It gets real weedy. And I see a lot of questions about I know that there are state OSHA requirements and state requirements. The federal law establishes a new floor, so a new minimum. So if your state had more lax requirements than the federal Emergency Temporary Standard, your state had an obligation within 30 days to match where the OSHA federal requirement is. So if your state requires more than the Emergency Temporary Standard, then you are required to comply with your state. However, if your state required less than the Emergency Temporary Standard, then you should follow the federal law because your state is implementing the federal law whether it has already happened, which it should, or if they're in the process of updating their regulations.

I know that I've heard a lot of questions about how does this interact with state law and my state law is different, but please just remember the federal government if they implement something you look at that like the bare minimum requirements and your state has the room to implement more but if not, follow the federal law as your base requirement. And so that's what's happening with the Emergency Temporary Standard. That's just important to keep in mind but this gets very weedy. And a lot of things are changing. Things change as you have maybe more employees becoming vaccinated, you might have to re look at your plans. And so we're not saying, and I want to be clear about that too, we're not saying you need to ask your employees, "Are you vaccinated?", before you implement things.

There's different requirement when it goes into figuring out if your employees are vaccinated or not. We're just saying that there are different standards if an employee is vaccinated.

And how you determine at your health center to figure out that information depends on how you would like to approach that, what works for your health center. However, there are just different standards for certain things like PPE when it comes to a vaccinated employee and when it comes to an unvaccinated employee.

Dianne ([00:39:29](#)):

Yeah. And Vacheria, I saw a couple of questions, I'm trying to watch them. It's a little distracting around whether the employee screening still applies with an employee is vaccinated and that's not specifically addressed in the Emergency Temporary Standard where the Emergency Temporary Standard says there's some flexibility for vaccinated employees is where it's in that well-defined area and it's only related to specifically what OSHA said was PPE, physical distancing, and physical barriers. So I think you still have time to comment on this Emergency Temporary Standard, colleagues, who are listening to us today. And so this might be something where you submit to OSHA a comment that says, "There should be some flexibility around the screening requirements when you, as the employer, know that the employee is vaccinated." Then again, the science is going to lead there too and I'm no scientist. But there are only three specific pieces of the Emergency Temporary Standard that when you have all vaccinated employees in a well-defined area that that area is exempt from and that is the PPE, physical distancing, and physical barriers.

So like you were saying, Vacheria, this could change. And that would be a place I see all the questions related to that. And you can have employees self-monitor for symptoms and so it doesn't have to be that they have to show up at the front door and do this screening in person as you can develop a process and so I saw some questions around that where they are doing that on their own just making sure that, and this is one of the training components that's required, is that everybody's trained on what are the symptoms of COVID-19 because not everyone is a clinical person in your health center and doesn't know this. And so making sure they're trained on that and then what is the process for monitoring their symptoms and then having a reporting process as I saw some folks mentioned in their questions and that would fit within the screening for employees or you could have the screening happen when folks are reporting to work. You do have some flexibility there.

Vacheria Tutson ([00:41:40](#)):

Right. And so, Dianne, I will also ask Dr. Yee since I was poking at the questions too. People were asking about a distinction of does that patient need to be screened before they walk in the door or can that happen at the front desk? And so could we go back maybe two slides, Olivia, please to the patient screening slide? One more. Okay.

So this is pulled directly from the OSHA webinar. And so in settings where direct patient care provider and employers must limit and monitor points of entry and screen and triage all clients, patients entering the setting. So based on answering the setting, I would say that if you are waiting to screen a patient after they're in the room with the doctor, that might not cut the mustard of entering the setting. However, you are the best to judge your workflow and how your building is set up and how your health center's set up and what's the best for your employees and how to maximize space but keep people safe with the physical distancing, social distancing, physical barriers, all those things factored in. So I'm not going to say it has to be outside the door in the parking lot and I'm not going to say no it can't happen at the front desk.

I think that is a call that you make as a health center of what's the best way to protect other people who might be in that waiting area who might be entering your health center and what's the best way to also protect your employees just in case that person does screen positive and say, "Oh yeah, I haven't been able to smell all week," and that person's already in your waiting room. And I think that's with everything we're saying today. Some things are really a decision that has to be made at your health center.

And I saw another question about is it sites where everybody, this is definitely a per site type of evaluation. If you're conducting a hazard assessment, that's per site because every site has a different setup, different employees, and you want to make sure that every single employee has been trained, that they know what the protocols are and how it works at their health center at the site that they're at. So I think that's just an important distinction.

And a lot of this if you have a question, please feel free to reach out to me. We can definitely chat about it and get into the weeds. But I think it's a lot of conversations that will happen internally with maybe your compliance team, your C-suite about how to navigate some of these challenges or answer some of these questions. And also, the OSHA Emergency Temporary Standard talks about involving your employees in these conversations. So maybe if you're putting together five to 10 employees and asking them, "Hey, what would be the best way to screen patients? What has worked over the last 12 or 14 months? That didn't work? Okay, maybe we should try it this way," or "I went to a doctor's office and I saw them do it this way, maybe we should do it that way."

So also, if you're wrestling with how to approach some of these requirements, bring in your employees, allow them to have a voice and allow them to have a say in how you're going to establish your COVID-19 plan because I think also that helps let the employees know that they have a voice and that you care about how you're approaching this and that their opinion matters. So definitely wanted to address that but I think we would both keep stressing that it's really about what works for your health center and how to approach it to also be manageable and sustainable because we know that folks are tired and everybody wants COVID to be done but until it's officially done and until we're officially out of the pandemic, it's important to just take certain precautions to ensure that you're not exposing your employees and patients and community to COVID.

And so with that, I think we'll skip back over to a few slides because now Dianne's going to talk about the best part, enforcement. Maybe that wasn't a good setup, not the best part but very important. A very important part as we all want to know what happens. But before we get to that actually, a question we see in the chat is about the PTO requirements. And we know that under the Emergency Temporary Standard, employees must be immediately removed if they have tested positive for COVID and also have the opportunity to have PTO. And there's different requirements for that too of how they can be paid, how long a PTO do they get, what do those numbers really look like? And some of that could be very situational specific, however, there is a really important part about supporting employees who want to leave to get vaccinated.

And so Dianne, I know that you were going to touch on that requirement to allow employees to get vaccinated.

Dianne ([00:46:18](#)):

Thanks, Vacheria. I think it might be on the next slide, the support for vaccination component of this. And as the slide sort of catch up with where we are, just to be clear, the OSHA COVID-19 Emergency Temporary Standard does not require all healthcare employees to be vaccinated but it does encourage vaccination among employees. If you read the comments to the standard, OSHA reviews all this literature that says one of the big barriers for healthcare employees in particular to getting vaccinated, it

is having time off in order to get vaccinated and then recover from any of the symptoms from the vaccination or any of the effect of the vaccination.

And so the Emergency Temporary Standard requires employers to support employees in getting vaccinated by providing reasonable time and paid leave to employees for vaccination and then any of those side effects. So reasonable time may include but is not limited to time spent during work hours related to vaccination appointments, filling out the paperwork, setting up an appointment, time spent at the vaccination site, time spent traveling to and from the location in order to receive the vaccination.

And then the paid leave component here, that paid leave can be in the form of paid sick leave or administrative leave from the employee's accrued sick leave if they have that available or in some additional paid leave provided by the employer for this purpose. This is a place, as in several parts of the ETS, where we see OSHA regularly referencing the other resources that have been made available during the pandemic in terms of how employers are getting support to provide this type of time off for employees. And so this is the place where if this aligns with funding that employers have received and then they can use the time in terms of getting some tax benefit for having given this time, this offer for employees.

So what I like about this is that OSHA talks about where the paid leave can come from. You can set a cap on the amount of time so it's not that people get three weeks off in order to receive and recover from the side effects of the vaccination but that cap has to be reasonable. And then OSHA does provide what they think is reasonable but this is what OSHA thinks is reasonable so it's helpful but something might be in your situation reasonable that's different than this but OSHA presumes that if an employer makes available four hours of paid leave to receive each dose of the vaccine as well as up to 16 additional hours of leave for any side effects, so eight hours after each vaccine administration, OSHA would consider that to be reasonable in terms of the amount of time and paid leave provided to an employee.

Of course, that might be different if the only time off an employee needs to get vaccinated is to walk down to the vaccination site that you have in your health center or in partnership with the pharmacy across the street, things like that, and so you may determine that a smaller amount of time is reasonable for your employees, at least, to get the vaccine administered and then you still provide the same amount of time to recover. If an employee gets vaccinated on their own time, so if I go after work today and get vaccinated as my employer if I work at your health center, you would still be required to provide the time to respond to any side effects that are experienced from the vaccination just because I got the shot when I was not on the clock at the health center doesn't get the employer out of this expectation that they'll provide support for responding to the vaccine side effects.

All right. Next slide I think is enforcements where I get to say all the scary stuff. And I will say your COVID-19 plan, your hazard assessment, all of your thinking around this, don't just keep it in your brains. Make sure you document that, what you're doing because that allows you to provide documentation to OSHA that you are attempting to come into compliance with this Emergency Temporary Standard. You're doing your best and so then therefore hopefully they will be more lenient in terms of enforcement.

So initially, I think a lot of us when this came out in June of 2021, we're like, "Well, where have you been, OSHA?" Hopefully nobody from OSHA's on here. You blocked all of them, right? Thanks but we've been trying to do this for the last 18 months and now you come out with this standard that we're supposed to be needing when we're already putting these things in place and feeling like we're on a path. And OSHA says initially in March of 2020, OSHA thought that it could protect employees, make its mission of protecting employees using what already exists in OSHA. So using those regulations related to the respiratory program or to the sanitation requirements or PPE generally.

So they thought we could use this existing workplace standards that we have, this general duty clause, this general duty for employers to protect their employees. And then the OSHA and the CDC would put out this industry specific guidance and that that would be enough to protect employees. It turns out that there have been tens of thousands of COVID related complaints coming in to OSHA and to their state partners related to what employers are doing related to COVID-19. A very significant proportion of those are healthcare related, not health centers specifically, but healthcare related employees who are complaining and saying, "We don't have the PPE that we need and we're not being provided with the protections that we should have."

And so there have been a lot of complaints coming in to OSHA that employers are not meeting their responsibilities under the existing workplace standards, the general duty clause. So next slide we move from March 2020 up until when the ETS was issued and we don't have time to dig too much into this but OSHA realized that these existing standards and regulations are not sufficient to address what's really happening related to COVID-19. They felt they need to provide really specific guidance to the healthcare field in terms of protecting employees from COVID-19 that the general duty clause was too broad, there are too many requirements for OSHA to meet in terms of penalizing employers who are not protecting employees.

Next slide please. So I pulled a little commentary from the comments to the Emergency Temporary Standard to talk about how this used to work. Before there was the Emergency Temporary Standard, the enforcement that OSHA could have against an employer was under the general duty clause. They could go into a hospital setting and they could say, "You're not protecting your employees." They have to meet a high burden in terms of evidence and all of the components of demonstrating that the employer is not meeting those requirements. And so now in breaking it out in the Emergency Temporary Standard, it provides OSHA individual expectations where they can say, "Did this help your employer meet the requirements under the COVID-19 Emergency Temporary Standard? Yes or no?", instead of saying, "Did you generally protect your employees?" They can say, "Did you provide face masks, yes or no? Did you provide respirators, yes or no? Did you do the training?"

And so all those pieces of the regulation make it easier for OSHA to pursue enforcement action against healthcare providers. So under the ETS, OSHA can cite the employer. For example, in this hospital setting where the hospital has implemented some parts, so they require respirators for employees but not the other parts of the ETS, about halfway through this quote here, you'll see this, "Under the ETS, OSHA can then cite the employer for violating the specific requirements necessary to protect the workers in those settings, such as face masks, physical distancing, screening of employees and patients." And so it provides this checklist for enforcement action that OSHA can then pursue against employers.

Next slide please. So the penalties under the general duty clause, there's a maximum penalty for serious violations of some \$13,000 but under the ETS, OSHA can go expectation standard by standard, each prong of that then becomes a potential penalty against the healthcare provider. And so if you are wondering whether this is going to be high risk for health centers or a high dollar response if you are found to be in noncompliance, you can see that the violations here could add up pretty quickly. And OSHA seems pretty primed to move on this enforcement because they're mad at healthcare entities, it seems to me in reading the comments to this.

So the next slide, I think, talks about we always ask, "How would you get in trouble around any of these standards or regulations?" So how you would get in trouble for this would be one of your employees complains to OSHA and so then OSHA opens an investigation. Of course, you can't retaliate against that employee and you participate in that investigation and then OSHA has a finding, a notice of citation that comes to the employer. OSHA can also do random inspections. There are also, and we

didn't have time to talk about it today, requirements for employers to report COVID-related fatalities and other issues in the health center. And so you have an affirmative duty to report to OSHA, you're submitting those reports to OSHA. OSHA can say, "Oh, this health center has sent in eight," or "this health center has sent in zero and everybody else has sent in eight and so we should go figure out because obviously the one with zero isn't paying attention to this."

What's hopeful is that you can see the inspection procedures are posted publicly so you can look at those. And then I think with that, I'm handing it back to Vacheria for the I scare you and then Vacheria says, "Here's some resources."

Vacheria Tutson ([00:57:45](#)):

Yeah. And I mean we're literally finishing right on the minute. So if you have a few extra minutes, we will try to answer maybe one question or clarify something. Dianne, someone agreed with you and wanted to Q&A that this OSHA rules about 12 months too late so I think everybody's feeling that way. We echo how you feel. And so folks are hopping off, I just want you to know that what NACH is doing so we will circulate a resource list with about 12 or 13 resources and this is just a variety of some of them. There's the OSHA resources like a checklist to help you do a hazard assessment, the template COVID-19 plan, as well as things from our health center clearinghouse like basic preparations for fluid operations during a pandemic because the good thing is at this point people have found best practices of what works in a health center and how to adapt.

And so learning from your colleagues, we have collected those resources and we will circulate it as well as I will put together a Q&A document to circulate next week that gets us some of the questions that we didn't get to specifically answer in the Q&A. But we did incorporate a lot of questions along the way so I hope we have answered your questions. And I will just say that if you want a really, really in-depth, in-the-weeds webinar, Feldesman Tucker is hosting a webinar August 11th, August 18th. You get to see Dianne, you get to see Molly. There is a NACH member code so please reach out to me at RegulatoryAffairs@NACH.org or please feel free to reach out and submit questions.

And so one thing that I just saw, Dianne, that I want to just clarify before folks get off, the PTO requirement is separate from existing PTO, correct? It is.

Dianne ([00:59:37](#)):

Sure.

Vacheria Tutson ([00:59:39](#)):

As in-

Dianne ([00:59:40](#)):

[inaudible 00:59:40] separate, I'm sorry.

Vacheria Tutson ([00:59:42](#)):

Okay. Separate as in before COVID exists, employees had PTO. You cannot require them to use their own PTO but you have to provide additional PTO if that employee said, "Hey, I want to take off to get vaccinated tomorrow," they don't have to use the PTO in their existing bank.

Dianne ([01:00:04](#)):

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I think you can have them use their accrued time that they have in place and you can also provide additional PTO. But Vacheria, if you're telling me it has to be above and beyond, then...

Vacheria Tutson ([01:00:17](#)):

Okay. I will defer to you.

Dianne ([01:00:21](#)):

We will follow up on that and pull the exact language that's in both the reg and I'll also check the FAQ too to see if there's been additional clarification on that.

Vacheria Tutson ([01:00:33](#)):

Yeah. So with that being said, please look out for a followup Q&A document. There's definitely additional resources. We want to say thank you for attending. And as you can see, this is a complicated process, a complicated topic and we will definitely make sure we continue to provide you updated information. But like I said, please feel free to reach out with any questions. NACH is here to help you through this process. I saw a lot of questions about mandating the vaccine, we don't necessarily have an answer for you but NACH is working on providing resources to help health centers make a decision if you would like to mandate the vaccine. I think that is a health center specific decision and so I think that that's something that you will make with your board, with your C-suite, but NACH is working on a memo to give you the resources to make those decisions.

So thank you for joining us today and always feel free to reach out as NACH is here for you. Have a great day.

Dr. Ron Yee ([01:01:33](#)):

Thanks everybody.