

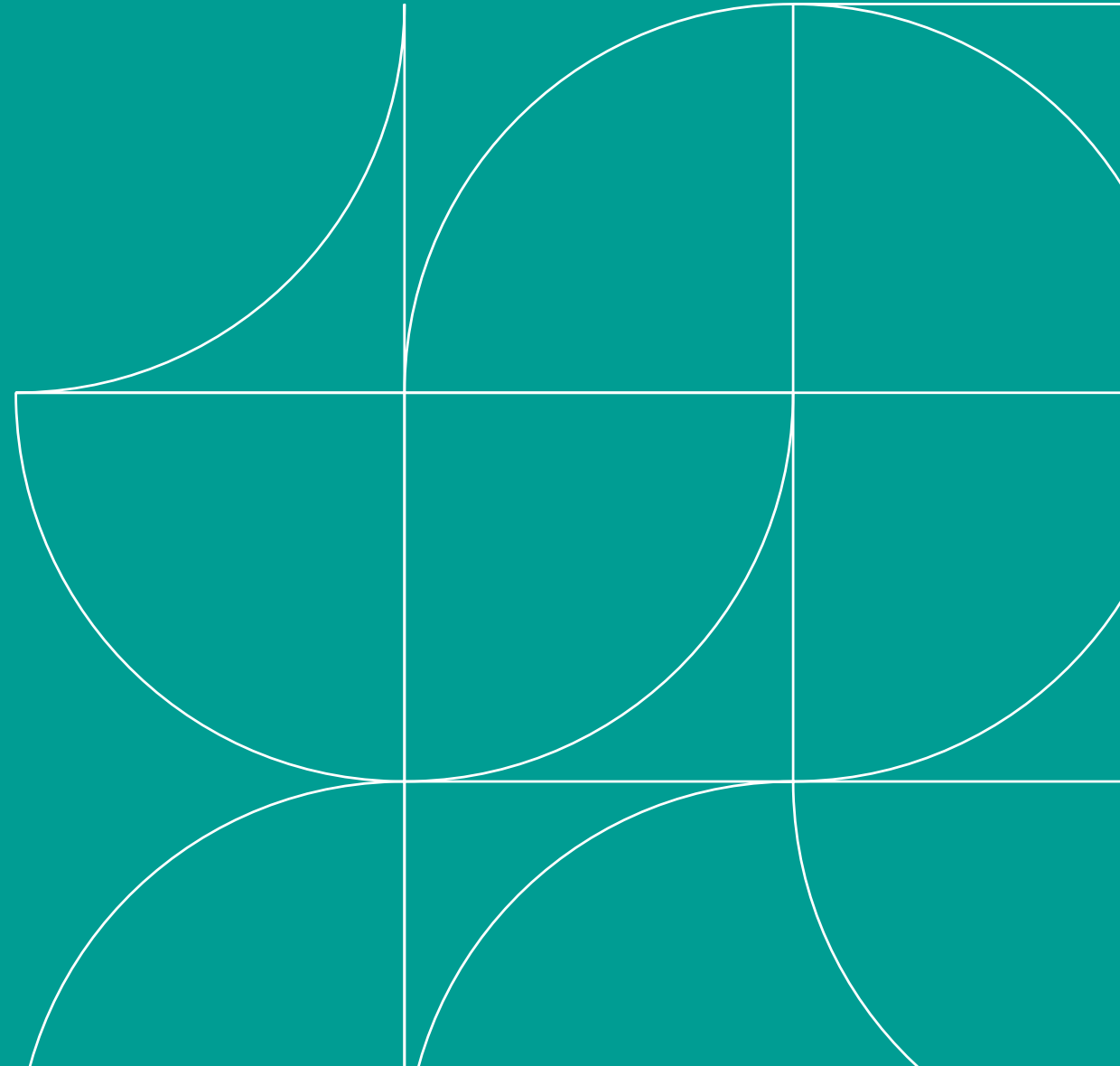


Federal COVID-19 Emergency Temporary Standard (ETS)

July 14, 2021

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Speakers



Adam R. Young
Partner
Chicago
ayoung@Seyfarth.com



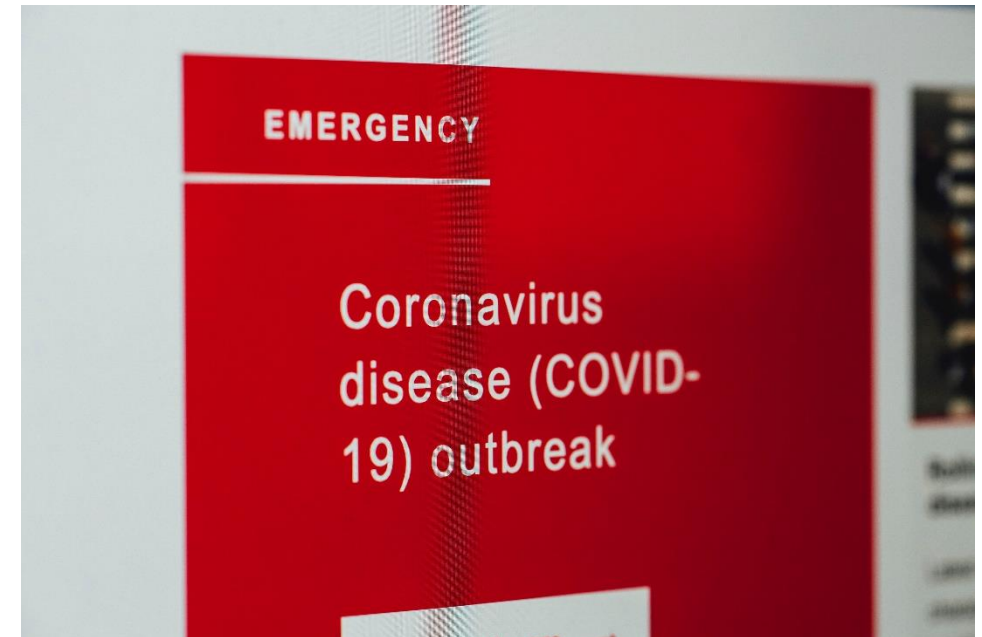
Daniel R. Birnbaum
Associate
Chicago
dbirnbaum@Seyfarth.com

Federal COVID ETS Dates

- 01** Effective date of June 21, 2021
- 02** Compliance date of July 6, 2021, except for physical barriers, ventilation, and training
- 03** Compliance date of July 21, 2021, for physical barriers, ventilation, and training
- 04** Six months until renewal date
- 05** National Emphasis Program / Enforcement Directive

Scope and Application

- Applies in healthcare settings and healthcare support services
- Overall Vaccination Exception:
 - In well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID–19 will be present, PPE, distancing, and physical barriers are *not* required for employees who are fully vaccinated.



COVID-19 Plan

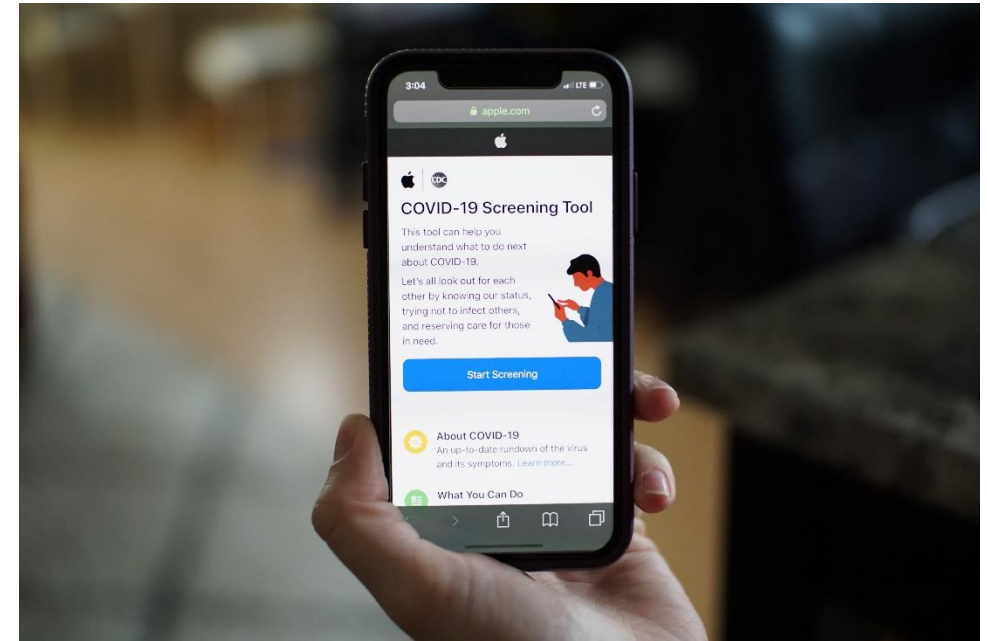
- Requires a written plan.
- Designated COVID-19 safety coordinator(s), knowledgeable in infection control principles and practices as they apply to the workplace and employee job operations.
- Workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19.
- Procedures to determine employees' vaccination status.
- Seek input of non-managerial employees and union, if any, in the hazard assessment and the development and implementation of the COVID–19 plan.
- Policies to minimize the risk of transmission of COVID–19 for each employee.
- Policies to effectively communicate and coordinate with other employers.

Employee Screening and Exposure Notification

- Screen each employee before each work day and each shift. Screening may be conducted by asking employees to self-monitor before reporting to work or may be conducted in-person by the employer.
- Employee must be required to notify of COVID+ test, diagnosis, symptoms
- Within 24 hours, must notify each employee who was not wearing a respirator and any other required PPE and has been in close contact with that person in the workplace.
- Notify all other employees who were not wearing a respirator and any other required PPE and worked in a well-defined portion of a workplace (e.g., a particular floor) in which that person was present during the potential transmission period. The potential transmission period runs from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated

Patient and Visitor Screening, Isolation

- Limit and monitor points of entry.
- Screen and triage all clients, patients, residents, delivery people and other visitors, and other non-employees entering the setting.
- Use patient management strategies in accordance with CDC’s “COVID–19 Infection Prevention and Control Recommendations.”
- Develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with CDC’s “Guidelines for Isolation Precautions”



Record-keeping

- Must retain all versions of the COVID–19 plan during pandemic
- Establish and maintain a COVID-19 log, recording all cases, regardless of work-relatedness
 - Maintained as confidential medical record
 - Updated within 24 hours of learning of COVID+ case
 - Contents:
 - name,
 - contact information,
 - job title,
 - location worked,
 - date of last day in workplace,
 - date of positive test or diagnosis,
 - date of first symptoms



PPE / Facemasks

- Must provide, and ensure that employees wear, facemasks (FDA-cleared)
- Masks required when working indoors and when in vehicles
 - Exceptions
 - employee is alone in a room
 - employee is eating and drinking at the workplace, provided at least 6 feet away from others, or separated from others by a physical barrier.
 - necessary to see mouth (deaf person) and conditions do not permit clear plastic mask
 - employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act, or religious belief (need face shield or similar)
 - greater hazard (need face shield or similar)
 - Respirators and other PPE for exposure to people with suspected or confirmed COVID–19, or for aerosol generating procedures

Sanitation & Hygiene

- Must follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations" and CDC's "Guidelines for Environmental Infection Control," pp. 86-103, 147-149
- Clean high-touch surfaces and equipment at least once a day, following manufacturers' instructions for application of cleaners
- A person who is COVID-19 positive has been in the workplace within the last 24 hours, clean and disinfect, in accordance with CDC's "Cleaning and Disinfecting Guidance" (incorporated by reference, § 1910.509), any areas, materials, and equipment under the employer's control that have likely been contaminated by the person who is COVID-19 positive
- Alcohol-based hand rub that is at least 60% alcohol or provide readily accessible hand washing facilities.

Ventilation

- HVAC system(s) is used in accordance with the HVAC manufacturer's instructions and the design specifications
- Amount of outside air circulated through its HVAC system(s) and the number of air changes per hour are maximized to the extent appropriate
- Air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC system(s) (or highest compatible)



Medical Removal

- COVID+ Employees -- employer must immediately remove the employee and keep the employee removed until:
 - employee meets the return to work criteria, or
 - negative PCR test; with negative test, employee may return to work immediately.
- Exposed employee -- return to work criteria or negative PCR test submitted five days after exposure
 - not required to remove a symptomatic employee who has been vaccinated or had confirmed COVID in last three months,
- Benefits -- benefits to which the employee is normally entitled and same regular pay the employee would have received had the employee not been absent from work, up to \$1,400 per week, until the employee meets the return to work criteria

Medical Removal Benefits

- Employers are required to provide certain pay and benefits to employees when they are removed or working remotely or in isolation.
- Employees may be entitled to up to \$1,400 per week.
- Ultimately, the determination regarding compensation for medical removal may depend on various factors including the size of the company, other sources of compensation to the employee, and payroll records.
 - OSHA will consider an employee’s regular rate of pay, time worked per week, and dates when payment should be made, less customary deductions.
 - OSHA recognizes that wages may shift during the pandemic and will consider “current wages.” OSHA will look to employees with similar job titles and seniority to determine proper wages.
- Violations will be considered “Serious” and punitive damages may be considered under OSHA’s whistleblower statute, Section 11(c).

Training

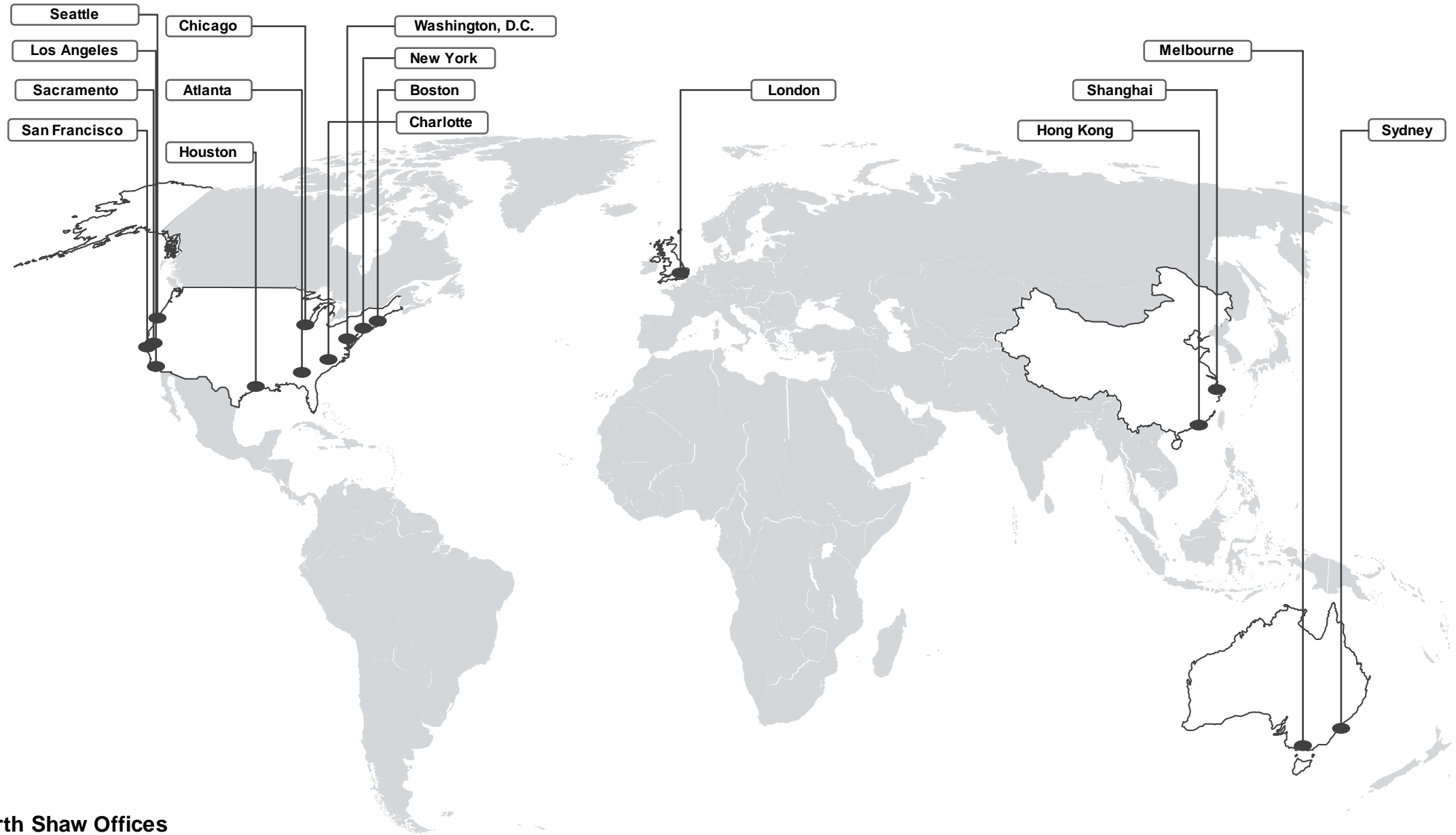
Employer must provide training on:

- COVID–19, the signs and symptoms of the disease, risk factors for severe illness, and when to seek medical attention including how the disease is transmitted, hand hygiene, ways to reduce the risk of spreading COVID–19 through the proper covering of the nose and mouth.
- Employer-specific policies and procedures on patient screening and management;
- Tasks and situations in the workplace that could result in COVID–19 infection
- Employer-specific multi-employer workplace agreements related to infection control policies and procedures,
- PPE, limitations, how to use
- Procedures on health screening and medical management;
- sick leave policies, any COVID–19-related benefits
- Follow-up training when Changes occur that affect the employee’s risk of contracting COVID–19 at work or policies /protocols are changed, or indication employee does not understand

National Emphasis Program / Enforcement Directive

- Under COVID-19 National Emphasis Program ([NEP](#)), OSHA will prioritize fatality inspections at “workplaces with a higher potential for COVID-19 exposures, such as hospitals, assisted living, nursing homes and other healthcare and emergency response providers treating patients with COVID-19”
- Second priority to inspections based on complaints involving insufficient COVID controls, workers suspected or confirmed positive.
- Programmed inspections, list of Primary Target Industries
- *Enforcement Directive* [DIR 2021-02 \(CPL 02\)](#) provides inspection procedures, guidance for compliance officers for each of the substantive areas described in this PowerPoint.

Today: Global Reach



thank
you

Adam R. Young
ayoung@seyfarth.com

Daniel R. Birnbaum
dbirnbaum@seyfarth.com