

**OSHA ETS Special-Event Webinar  
Questions & Answers  
November 10, 2021**

*The following questions were asked during WorkCare’s special-event webinar on the Occupational Safety and Health Administration’s COVID-19 Vaccination and Testing Emergency Temporary Standard on Nov. 10, 2021. Due to time constraints, these questions were not answered during the live webinar. Anthony Harris, M.D., M.B.A., M.P.H., WorkCare’s Chief Innovation Officer and Associate Medical Director, presented the webinar and provided these answers. For his answers to other questions, please listen to the recorded session. Our regularly scheduled monthly webinar on Nov. 3, 2021, (links to recording and Q&A below) was also dedicated to this topic. It was presented a day before the ETS was published in the Federal Register.*

Here are links for your reference:

- [November 10 Webinar Recording](#)
- [November 3 Webinar Recording](#)
- [November 3 Q&A](#)

The COVID-19 emergency temporary standard (ETS) applies to private companies with 100 or more employees. It is currently on hold pending the resolution of litigation.

**Q:** Is there a medical or religious exemption an employee could claim to avoid testing?

**A:** No. Exemptions are only for vaccination.

**Q:** If most transmissions occur outside of work, how does a “grave danger” to workers from workplace exposure be considered to exist? Also, bear in mind that the workforce, in general, is a healthier subset of the population and under age 65. Please comment on how that might counter, or support, the rationale OSHA claims.

**A:** I am not aware of any objective data that substantiates the workplace poses a greater risk to COVID-19 transmission than the general community risk. However, if stratifying the levels of risk based upon pandemic statistics, the workplace is the number-two-riskiest scenario behind household exposures. This is, in part, the rationale behind the federal ETS consideration of “grave danger.”

**Q:** As an RN who worked bedside for years and took care of many influenza-positive patients, if I contracted influenza from a patient at work, proving it was work-related/workers’ comp was not an option and always denied. How and why is COVID different concerning the burden of proof?

**A:** Clinically speaking, there is no difference in the causal burden of proof for exposure to and transmission of influenza and COVID in the workplace. OSHA has taken a stance and made a definitive decision to highlight the workplace as a unique exposure risk for workers. One considerable factor may be the reproductive rate of COVID-19 compared to influenza, which is as high as eight for COVID compared to one to two for influenza. Statistically, this means a COVID workplace transmission is far more likely to occur than an influenza transmission, thus lowering the burden of proof.

**Q:** What advice do you have for employers who are trying to keep employees with long-COVID symptoms such as brain fog, shortness of breath and fatigue safe and on the job?

**A:** For employees with long COVID symptoms, a fitness-for-duty evaluation by a qualified medical professional is appropriate. Clinical evaluation of an employee’s ability to safely perform his or her job has been a



necessary step throughout the pandemic. Each case requires a unique assessment for safety and health reasons. Occupational health clinicians are adept at performing fitness-for-duty evaluations and should be leveraged.