



## **New COVID-19 Workplace Protections for Certain Health Care Workers June 16, 2021**

The Occupational Safety and Health Administration (OSHA) released a health care emergency temporary standard (ETS) aimed at protecting workers working in health care settings where suspected or confirmed COVID-19 patients are treated.

### **What is an emergency temporary standard?**

An ETS is an OSHA-issued workplace safety and health standard that takes effect immediately after it is issued. To issue an ETS, OSHA must determine that workers are in grave danger due to exposure to certain toxic substances or agents or to new hazards and that an emergency standard is needed to protect them. An ETS can be made permanent after going through the usual procedure for adopting a permanent standard.

### **When does the COVID-19 ETS go into effect?**

This ETS is effective for six months immediately upon publication in the Federal Register, which will likely occur during the week of June 14, 2021. Employers must comply with most requirements within 14 days and with requirements involving physical barriers, ventilation and training within 30 days.

### **How does this affect the state-adopted COVID-19 ETS in California, Michigan, Oregon and Virginia?**

When OSHA promulgates an ETS, states and U.S territories (Puerto Rico) with their own OSHA State Plans must either amend their standard to be identical to or at least as effective as the new standard or show that an existing State standard is at least as effective as the new Federal standard. OSHA State plans must adopt the federal ETS within 30 days.

### **How does the ETS affect other state and local directives or guidance that apply in a workplace?**

The ETS does not limit state or local government mandates or guidance (e.g., executive order, health department order) that goes beyond and is not inconsistent with the requirements of the ETS.

## Who is covered?

The ETS applies to all settings where any worker provides health care services or health care support services. Where a health care setting is embedded within a non-health care setting (e.g., medical clinic in a prison or university or a COVID-19 isolation ward in a prison), this section applies only to the embedded health care setting and not to the remainder of the physical location.

If an emergency responder or a licensed health care worker enters a non-health care setting to provide health care services, the ETS also generally applies, but only to the provision of the health care services by that worker. For example, where a physician or an emergency medical responder enters an office building or residential area of a prison to provide health care services to a sick person, the ETS generally applies, but only to the provision of health care services by the physician or emergency responder and not to all other workers in the setting.

This ETS does not cover the following:

- State and local government health care workers in non-OSHA State plans. (For a list of states that have state plans, visit [OSHA's State Plans webpage](#).)
- The provision of first aid by an employee who is not a licensed health care provider.
- Non-hospital ambulatory care settings (e.g., a medical clinic or physician's office), where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings.
- Hospital ambulatory care settings where all employees are fully vaccinated, and all non-employees are screened and people with suspected or confirmed COVID-19 are not permitted to enter those settings.
- Home health care settings where all employees are fully vaccinated, and all non-employees are screened and people with suspected or confirmed COVID-19 are not present.
- Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing).

OSHA created a [flow chart](#) to help determine if a workplace is covered.

## What does the COVID-19 ETS require?

The COVID-19 ETS requires the following of employers subject to the ETS:

- *COVID-19 plan*: Develop and implement a COVID-19 plan (in writing if more than 10 employees), conduct a workplace-specific hazard assessment and involve workers and their representatives in the process.
- *Patient screening and management*: Limit points of entry to settings; screen and triage patients, clients and other visitors and non-employees.
- *Personal protective equipment (PPE)*: Provide and ensure each employee wears a facemask when indoors; and provide and ensure employees use respirators and other PPE when exposed to people with suspected or confirmed COVID-19. The plan also includes separate mini respiratory program requirements that apply when an employee- or

employer-provided respirator is used voluntarily instead of a face mask to provide extra protection.

- *Ventilation:* Ensure that HVAC systems are used in accordance with manufacturer's instructions and design specifications for the systems and that air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher if the system allows it.
- *Health screening and medical management:* (1) Screen employees; (2) require employee to notify the employer when the employee is COVID-19 positive, suspected of having COVID-19 or experiencing certain symptoms; (3) notify certain employees within 24 hours when a person who has been in the workplace is COVID-19 positive; (4) create requirements for removing employees; and (5) provide medical removal protection benefits to workers who must isolate or quarantine, including a continuation of benefits and pay up to as much as \$1,400 per week.
- *Vaccination:* Provide reasonable time and paid leave (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination.
- *Recordkeeping:* Establish a COVID-19 log of all employee instances of COVID-19 without regard to occupational exposure and follow requirements for making records available to employees/representatives (if more than 10 employees).

In addition, an employer's COVID-19 plan must include the following elements: standard and transmission-based precautions<sup>1</sup>, physical distancing, physical barriers, cleaning and disinfection, training, anti-retaliation provisions and reporting of work-related COVID-19 fatalities and in-patient hospitalizations to OSHA.

**If a worker or union representative requests a COVID-19 log from the employer, what type of information would be on it?**

When a worker or union representative requests a copy of the COVID-19 log, they can receive the following:

- The individual COVID-19 log entry for a particular worker so long as it is being requested by that worker or someone who has the written authorized consent of that employee.
- A version of the COVID-19 log that removes the names of employees, contact information and occupation and only includes, for each employee in the COVID-19 log, the location where the employee worked; the last day that the employee was at the workplace before removal; the date of that employee's positive test for or diagnosis of COVID-19; and the date the employee first had one or more COVID-19 symptoms, if any were experienced.

**What is the mini respiratory protection program? How is it different from the OSHA Respiratory Protection standard?**

The mini respiratory protection program is a section of the COVID-19 ETS that applies only when workers are not exposed to suspected or confirmed sources of COVID-19, but respirator use could offer enhanced worker protection over facemasks. The mini respiratory protection program provides a limited set of requirements for the safe use of respirators when either an employee chooses to use or an employer decides to provide respirators instead of facemasks. If employees

provide their own respirators, the employer is required to provide each such employee with a notice of precautions to take. If an employer provides respirators, the employer must provide training, require each employee to do a seal check to make sure the respirator is properly sealed to the face each time it is put on and comply with certain requirements for the use and cleaning of respirators.

OSHA's Respiratory Protection standard applies when workers are exposed to a person suspected or confirmed with COVID-19, aerosol generating procedures on a person suspected or confirmed with COVID-19 and for Standard and Transmission-Based Precautions when exposed to suspected or confirmed sources of COVID-19. This standard includes such additional elements as a required medical evaluation and fit testing for each worker.

### **What information might employers require employees to provide?**

*COVID-19 Illness or Symptoms:* Under the ETS, a covered employer must require employees to notify the employer when the employee (1) is COVID-19 positive; (2) has been told by a health care provider that they are suspected to have COVID-19; (3) is experiencing recent loss of taste, smell or both with no other explanation; or (4) is experiencing both a fever ( $\geq 100.4^{\circ}\text{F}$ ) and new unexplained cough associated with shortness of breath. Knowledge of these triggers an employer's obligation to remove an employee from the workplace.

*Vaccination Status:* In order for an employer to be exempt from providing certain controls for fully vaccinated employees in a well-defined area of a workplace (i.e., certain hospital outpatient and home health care settings) where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, the COVID-19 plan must include policies and procedures to determine employees' vaccination status. OSHA has not provided guidance on what policies and procedures would be sufficient, such as whether an employee must be required to provide a copy of a vaccination card.

### **What must employers tell workers about COVID-19 cases in the workplace?**

When an employer is notified of a COVID-19 positive case in the workplace, the employer has separate notification obligations that must be completed within 24 hours, if applicable. The employer must notify:

- Each worker who has been in close contact with the COVID-19 positive person in the workplace about this occurrence and the date that the close contact occurred.
- All other workers who worked in a well-defined portion of the workplace (e.g., a particular floor) in which the COVID-19 positive person was present during the potential transmission period about this occurrence and the date(s) the COVID-19 positive person was present in that portion of the workplace during the potential transmission period.

Employers are not required to notify workers who were wearing respirators and any other required PPE when a person who is COVID-19 positive has been in the workplace. In addition, the notification provisions are not triggered by the presence of a patient with confirmed COVID-19 in a workplace where services are normally provided to suspected or confirmed COVID-19 patients, such as emergency rooms, urgent care facilities and COVID-19 wards in hospitals.

**What is OSHA’s definition of a close contact?**

OSHA defines a close contact as being within six feet of another person for a cumulative total of 15 minutes or more over a 24-hour period during that person’s potential period of transmission.

**Can an employer do more than what the ETS requires?**

Yes. OSHA standards set minimum safety and health requirements. An employer can always do more, and unions might consider asking employers to implement additional controls and limit exemptions from protections. For example, although health care employees wearing respirators are exempt from exposure notification when a person who is COVID-19 positive has been in the workplace, unions might negotiate with the employer to include all staff in the notification.

**Where can I get more information about this ETS?**

OSHA has created a variety of materials to help workers and employers understand the ETS and how it applies in different health care settings, including some in Spanish. Visit [OSHA’s ETS webpage](#) for these materials. Included is a [helpful set of frequently asked questions](#) that address specific issues.

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<sup>i</sup> Standard precautions are applied to the care of all patients in all health care settings, regardless of the suspected or confirmed presence of the coronavirus. Transmission-based precautions generally are for patients who are known or suspected to be infected with the coronavirus.