

July 2, 2021

OSHA Interim Final Rule: COVID-19 Health Care Emergency Temporary Standard

At A Glance

The Occupational Safety and Health Administration (OSHA) June 21 published in the Federal Register an [emergency temporary standard](#) (ETS) for occupational exposure to COVID-19 that requires health care employers to take certain steps to protect their workers in settings where suspected or confirmed COVID-19 patients are treated.

The ETS, an outcome of President Biden’s Executive Order on “Protecting Worker Health and Safety,” requires covered health care employers to develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. Covered employers also must implement other requirements to reduce transmission of COVID-19 in their workplaces. Further, the ETS requires employers to provide reasonable time and paid leave for employee vaccinations and any side effects and for medical removal of employees due to suspected or confirmed COVID-19 infection.

The ETS incorporates, by reference, a number of consensus standards and evidence-based guidelines developed by the Centers for Disease Control and Prevention (CDC) and other agencies. In addition, the standard exempts from coverage certain workplaces, including those where all employees are fully vaccinated and individuals with possible COVID-19 are prohibited from entry. It also exempts from some of the requirements of the standard fully vaccinated employees in well-defined areas where there is no reasonable expectation that individuals with COVID-19 will be present.

The ETS is effective immediately, and employers must comply with most provisions by July 6, and with the physical barriers, ventilation and training requirements by July 21. The ETS is effective for six months. During that time, the OSH Act requires OSHA to engage in a public rulemaking process. Following this process, the agency may finalize the ETS as a permanent standard, with or without modification, based on public comments.

OSHA’s [website](#) includes summaries, fact sheets, and compliance assistance materials and tools. Comments on the ETS are due to OSHA by July 21.

Our Take

In a [statement](#) when the ETS was first released AHA said, “For more than a year health care workers have battled COVID-19 and worked tirelessly and courageously to care for COVID and non-COVID patients across the country ... The safety and protection of all health care workers remains a top priority. The AHA together with hospitals and health systems remains

committed to following the science-based and sometimes quickly-evolving guidance issued by the CDC.”

While we appreciate that OSHA incorporated into the ETS some of CDC’s COVID-19 guidelines and recommendations, we are concerned about requirements that contradict or go far beyond what CDC recommends – in some instances, in ways that may put health care workers at greater risk. These include, for example, the requirements for barriers, the mini respiratory protection standard and the definition of “exposure” in the ETS. We also are disappointed by the unrealistically short compliance period, and the significant costs and additional resources that the rule will impose on hospitals without adequate rationale that these measures will better protect staff. The evidence clearly shows that hospitals and health systems have successfully protected their employees from COVID-19 throughout the public health emergency. Indeed, it was their top priority. Finally, the ETS fails to properly account for the high rate of vaccination among health care employees, as well as many Americans.

For these reasons, the AHA will [continue to urge OSHA](#) to delay adoption of the ETS, as well as request the agency extend the timeframe for comments.

What You Can Do

- ✓ Share this advisory with your chief medical officer, chief nursing officer, infection prevention and control staff, and other senior management.
- ✓ Submit a comment letter to OSHA by July 21.

Further Questions

Contact Roslyne Schulman at rschulman@aha.org or Nancy Foster at nfoster@aha.org with any questions.

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Overview

The Occupational Safety and Health Administration (OSHA) June 21 published in the Federal Register an emergency temporary standard (ETS) for occupational exposure to COVID-19 as an interim final rule. The ETS requires health care employers to implement policies and procedures to protect their workers in settings where suspected or confirmed COVID-19 patients are treated. The rules take effect immediately and employers must comply with most provisions by July 6 and with the physical barriers, ventilation and training requirements, by July 21.

The Occupational Safety and Health (OSH) Act requires OSHA to issue an ETS if the agency determines that employees are exposed to “grave danger” from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and an ETS is “necessary to protect employees from such danger.” In the preamble to the ETS, OSHA evaluates and then asserts a “grave danger” and “necessary” determination for workers in all health care settings in the United States and its territories where people with COVID-19 are reasonably expected to be present.

Further, according to the requirements of the OSH Act, an ETS serves as a proposal for a permanent standard, which the Act requires be finalized within six months (with or without modification). In other words, although the ETS takes effect immediately and its name suggests the new requirements are “temporary,” it can only be made permanent following a formal public notice and comment period, which is now underway. OSHA also notes that it has the authority to modify the ETS if needed due to further developments in the emergency (such as updated CDC workplace guidance), or to withdraw it entirely if vaccination and other efforts end the current emergency.

OSHA requests comments on the provisions of the ETS, all aspects of the economic analysis and whether the ETS should be adopted as a permanent standard. The AHA encourages members to review and evaluate the impact of this rule and to submit comments to OSHA by the July 21 deadline. Instructions for commenting are included below.

Requirements of the Health Care ETS

Scope and Application

The ETS applies, with some exceptions, to settings where any employee provides health care services or health care support services. The ETS is aimed at protecting workers facing the highest COVID-19 hazards — those working in health care settings where suspected or confirmed COVID-19 patients are treated. This includes employees in hospitals, nursing homes and assisted living facilities; emergency responders; home health care workers; and employees in ambulatory care facilities where suspected or confirmed COVID-19 patients are treated.

OSHA notes that nothing in the scope and applicability of the ETS is intended to limit state or local government mandates or guidance (e.g., executive order, health department order) that go beyond the ETS’ requirements or that are not inconsistent with the ETS’ requirements. OSHA also encourages employers to follow public health

guidance from the Centers for Disease Control and Prevention (CDC) even when it is not required by the ETS.

The ETS does not apply in the following circumstances:

1. The provision of first aid by an employee who is not a licensed health care provider;
2. The dispensing of prescriptions by pharmacists in retail settings;
3. Non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
4. Well-defined hospital ambulatory care settings (for example radiology departments, dialysis centers or laboratories) where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
5. Home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;
6. Health care support services not performed in a health care setting (e.g., offsite laundry, off-site medical billing); or
7. Telehealth services performed outside of a setting where direct patient care occurs.

OSHA notes that it does not intend to prevent employers who have some employees who are unable to be vaccinated due to medical conditions or certain religious beliefs, from the exemptions described in items 4 and 5 above. As long as the employer provides reasonable accommodations to such employees, in a way that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), the employer still may be able to be exempted from the ETS.

Further, in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, the ETS exempts fully vaccinated workers from the rule's masking, distancing and barrier requirements. The examples of well-defined areas of a workplace described in the ETS are billing or other administrative offices, employee break rooms or employee meeting areas. To use this vaccinated-employee exception, employers are required to determine where such well-defined areas exist and must have a process for determining which employees are vaccinated.

COVID-19 Plan

OSHA requires an employer to develop and implement a COVID-19 plan for each workplace. It must be a written plan for employers with more than 10 employees. The ETS defines a workplace as a physical location where the employer's work or operations are performed. For employers with multiple workplaces that are substantially similar, the COVID-19 plan may be developed by workplace type rather than by individual workplace as long as all required site-specific information is included in the plan. For those employers who do not already have a COVID-19 plan in place, the OSHA [website](#) contains compliance assistance materials, including a model plan.

Other COVID-19 plan requirements include:

- *COVID-19 Safety Coordinators.* The employer must designate one or more workplace COVID-19 safety coordinators to implement and monitor the plan, and the written plan must document the identity of the safety coordinators. The rule provides that these safety coordinators must be knowledgeable about infection control principles and practices as they apply to the workplace and employee job operations. Moreover, they must have the authority to ensure compliance with all aspects of the plan.
- *Workplace-specific Hazard Assessment.* The employer must conduct a workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19.
- *Well-defined Area Exception.* In order for an employer to be exempt from providing controls in the “well-defined area” exception described above, which requires that the employees’ having fully vaccinated status, the plan must include policies and procedures to determine employees’ vaccination status.
- *Required Input.* The employer must seek the input and involvement of non-managerial employees and their representatives, if any, in the hazard assessment and the development and implementation of the plan.
- *Monitoring and Updating.* The employer must monitor each workplace to ensure the ongoing effectiveness of the plan and update it as needed.
- *Addressing Hazards.* The plan must address the hazards identified by the hazard assessment and include policies and procedures to:
 - Minimize the risk of transmission of COVID-19 for each employee, in the areas described below. OSHA notes that although the plan must account for the potential COVID-19 exposures to each employee, the plan can do so generally and does not need to address each employee individually.
 - Effectively communicate and coordinate with other employers. When employees of different employers share the same physical location, each employer must effectively communicate its COVID-19 plan to all other employers, coordinate to ensure that each of its employees is protected as required by the rule. Further, the rule requires that in this circumstance, the employer must adjust its plan to address any particular COVID-19 hazards presented by the other employees. This requirement does not apply to delivery people, messengers, and other employees who only enter a workplace briefly to drop off or pick up items.

An employer with one or more employees working in a physical location controlled by another employer must notify the controlling employer when those employees are exposed to conditions at that location that do not meet the requirements of this section.

- Protect employees whose jobs require that they enter into private residences or other physical locations controlled by a person not covered by OSHA (e.g., homeowners). This must include procedures for employee withdrawal from that location if those protections are inadequate.

OSHA notes that an employer may include other policies, procedures, or information necessary to comply with any applicable federal, state, or local public health laws, standards, and guidelines in their COVID-19 plan.

Patient Screening and Management

In settings where direct patient care is provided, the employer must: limit and monitor points of entry to the setting; screen and triage all clients, patients, residents, delivery people and other visitors, and other non-employees entering the setting; and implement other applicable patient management strategies in accordance with CDC's "[COVID-19 Infection Prevention and Control Recommendations](#)."

Standard and Transmission-Based Precautions

Employers must develop and implement policies and procedures to abide by Standard and Transmission-Based Precautions in accordance with CDC's "[Guidelines for Isolation Precautions](#)."

Personal Protective Equipment (PPE)

Facemasks. The ETS requires that employers must provide, and ensure that employees wear, facemasks. OSHA defines a facemask to mean, "a surgical, medical procedure, dental, or isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy."

The employer also must ensure that a facemask is worn by each employee over the nose and mouth when indoors and when occupying a vehicle with other people for work purposes. The employer also must ensure that each employee changes the facemask at least once per day, whenever they are soiled or damaged, and more frequently as necessary (e.g., patient care reasons). A sufficient number of facemasks must be provided by the employer to each employee to comply with these requirements.

The rule allows for certain exceptions to the requirements for facemasks, including:

- When an employee is alone in a room.
- While an employee is eating and drinking at the workplace, provided each employee is at least 6 feet away from any other person, or separated from other people by a physical barrier.
- When employees are wearing respiratory protection, as required below.
- When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic or includes a clear plastic window. In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if conditions permit.

- When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act, or due to a religious belief. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations also may need to be made for religious beliefs, consistent with Title VII of the Civil Rights Act.
- When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., arc flash, heat stress, interfering with the safe operation of equipment), the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least 6 feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard.

Where a face shield is required, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield.

Respirators and Other PPE for Exposure to People with Suspected or Confirmed COVID-19. When employees have exposure to a person with suspected or confirmed COVID-19, the employer must provide:

- A respirator to each employee and ensure that it is provided and used in accordance with OSHA's [Respiratory Protection Standard](#); and
- Gloves, an isolation gown or protective clothing, and eye protection to each employee and ensure that the PPE is used in accordance with OSHA's [PPE requirements](#).

OSHA notes that when there is a limited supply of filtering facepiece respirators, employers may follow the CDC's "[Strategies for Optimizing the Supply of N95 Respirators](#)." However, the agency encourages employers to select elastomeric respirators or powered air purifying respirators (PAPRs) instead of filtering facepiece respirators to prevent shortages and supply chain disruption.

Respirators and Other PPE During Aerosol-generating Procedures. For aerosol generating procedures (AGP) performed on a person with suspected or confirmed COVID-19, OSHA requires that the employer must provide:

- A respirator to each employee and ensure that it is provided and used in accordance with OSHA's [Respiratory Protection Standard](#) and
- Gloves, an isolation gown or protective clothing, and eye protection to each employee and ensure that the PPE is used in accordance with OSHA's [PPE requirements](#).

Use of Respirators When Not Required. When the use of a respirator is not required for an employee, the employer may provide a respirator to the employee instead of a facemask. In such circumstances, the employer must comply with the Mini Respiratory Protection Program, as described further below. Similarly, in circumstances where the use of a respirator is not required for an employee, the employer must permit the employee to wear their own respirator instead of a facemask. In such circumstances, the employer also must comply with the relevant requirements of the Mini Respiratory Protection Program.

Respirators and Other PPE Based on Standard and Transmission-Based Precautions. The employer must provide protective clothing and equipment (e.g., respirators, gloves, gowns, goggles, face shields) to each employee in accordance with Respiratory Protection Standard and Standard and Transmission-Based Precautions in health care settings in accordance with CDC's "Guidelines for Isolation Precautions" and ensure that the protective clothing and equipment is used in accordance with OSHA's PPE standard.

AGPs on Persons with Suspected or Confirmed COVID-19

The rule requires that when an AGP is performed on a person with suspected or confirmed COVID-19:

- The employer must limit the number of employees present during the procedure to only those essential for patient care and procedure support.
- The employer must ensure that the procedure is performed in an existing airborne infection isolation room (AIIR), if available.
- After the procedure is completed, the employer must clean and disinfect the surfaces and equipment in the room or area where the procedure was performed.

Physical Distancing

The employer must ensure that each employee is separated from all other people by at least 6 feet when indoors unless the employer can demonstrate that such physical distancing is not feasible for a specific activity (e.g., hands-on medical care). This provision does not apply to momentary exposure while people are in movement (e.g., passing in hallways or aisles). When the employer establishes that it is not feasible for an employee to maintain a 6-foot distance, the employer must ensure that the employee is as far apart from all other people as feasible.

OSHA notes that physical distancing can include a variety of methods such as: telehealth, telework or other remote work arrangements reducing the number of people in an area at one time, visual cues (such as signs and floor markings), adjusted work processes or procedures to allow greater distance between employees, and staggered arrival, departure, work, and break times.

Physical Barriers

At each fixed work location outside of direct patient care areas (e.g., entryway/lobby, check-in desks, triage, hospital pharmacy windows, bill payment) where each employee is not separated from all other people by at least 6 feet of distance, the employer must install cleanable or disposable solid barriers, except where the employer can demonstrate it is not feasible. The barrier must be sized (e.g., height and width) and located to block face-to-face pathways between individuals based on where each person would normally stand or sit. The barrier may have a pass-through space at the bottom for objects and merchandise. OSHA notes that physical barriers are not required in direct patient care areas or resident rooms.

Cleaning and Disinfection

In patient care areas, resident rooms, and for medical devices and equipment, the employer 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."

In all other areas:

- The employer must clean high-touch surfaces and equipment at least once a day, following manufacturers' instructions for application of cleaners.
- When the employer is aware that a person who is COVID-19-positive has been in the workplace within the last 24 hours, they must clean and disinfect, in accordance with CDC's "Cleaning and Disinfecting Guidance" any areas, materials, and equipment that have likely been contaminated by the person who is COVID-19-positive (e.g., rooms they occupied, items they touched).
- The employer must provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible hand washing facilities.

Ventilation

Employers who own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s) must ensure that:

- The HVAC system is used in accordance with the HVAC manufacturer's instructions and the design specifications of the HVAC system;
- The amount of outside air circulated through its HVAC system and the number of air changes per hour are maximized to the extent appropriate;
- All air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC system. If MERV-13 or higher filters are not compatible with the HVAC system, employers must use filters with the highest compatible filtering efficiency for the HVAC system;
- All air filters are maintained and replaced as necessary to ensure the proper function and performance of the HVAC system; and

- All intake ports that provide outside air to the HVAC system are cleaned, maintained, and cleared of any debris that may affect the function and performance of the HVAC system.

Where the employer has an existing AIIR, the employer must maintain and operate it in accordance with its design and construction criteria.

OSHA notes this section of the ETS does not require installation of new HVAC systems or AIIRs to replace or augment functioning systems. The agency also encourages employers to consider other measures to improve ventilation in accordance with “[CDC’s Ventilation Guidance](#),” such as opening windows and doors as this could include maximizing ventilation in buildings without HVAC systems or in vehicles.

Health Screening and Medical Management

Screening. The employer must 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. If a COVID-19 test is required by the employer for screening purposes, the employer must provide the test to each employee at no cost to the employee.

Employee Notification to Employer of COVID-19 Illness or Symptoms. The employer must require each employee to promptly notify the employer when the employee:

1. Is COVID-19-positive (i.e., confirmed positive test for, or has been diagnosed by a licensed health care provider with, COVID-19);
2. Has been told by a licensed health care provider that they are suspected to have COVID-19;
3. Is experiencing recent loss of taste and/or smell with no other explanation; or
4. Is experiencing both fever ($\geq 100.4^{\circ}$ F) and new unexplained cough associated with shortness of breath.

Employer Notification to Employees of COVID-19 Exposure in the Workplace. When the employer is notified that a person who has been in the workplace (including employees, clients, patients, residents, vendors, contractors, customers, delivery people and other visitors, or other non-employees) is COVID-19-positive, the employer must, within 24 hours:

- 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. The notification must state the fact that the employee was in close contact with someone with COVID-19 along with the date(s) that contact occurred.
- 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 period¹. The notification must specify the date(s) the person with COVID-19 was in the workplace during the potential transmission period.

- Notify other employers whose employees were not wearing respirators and any other required PPE and have been in close contact with that person, or worked in a well-defined portion of a workplace in which that person was present, during the potential transmission period.² The notification must specify the date(s) the person with COVID-19 was in the workplace during the potential transmission period and the location(s) where the person with COVID-19 was in the workplace.

The notifications must not include any employee's name, contact information or occupation.

In addition, these 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, COVID-19 testing sites, and COVID-19 units in hospitals.

Medical Removal from the Workplace. If the employer knows an employee is COVID-19-positive, then the employer must immediately remove that employee and keep them removed until they meet the return to work criteria below.

If the employer knows an employee is experiencing a recent loss of taste and/or smell with no other explanation, is experiencing both fever and new unexplained cough associated with shortness of breath, or has been told by a licensed health care provider that they are suspected to have COVID-19, then the employer must immediately remove that employee and either:

- Keep the employee removed until they meet the return to work criteria described below, or
- Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.

If the test results are negative, the employee may return to work immediately. If the test results are positive, the employer must immediately remove that employee and keep them removed until they meet the return to work criteria below. If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace, but the employer is not obligated to provide medical removal protection benefits described below. Unless there is undue hardship, OSHA requires employers to make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons.

¹ 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.

² Ibid

If the employer is required to notify the employee of close contact in the workplace to a person who is COVID-19 positive, then the employer must immediately remove that employee and either:

- Keep the employee removed for 14 days or,
- Keep the employee removed and provide a COVID-19 test at least five days after the exposure at no cost to the employee.

If the test results are negative, the employee may return to work after seven days following exposure. If the test results are positive, the employer must immediately remove that employee and keep the employee removed until they meet the return to work criteria. If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace for 14 days, but the employer is not obligated to provide medical removal protection benefits described below. Unless there is undue hardship, OSHA requires employers to make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons.

Employers are not required to remove any employee who would otherwise be required to be removed due to a close contact in the workplace to a person who is COVID-19-positive if the employee does not experience COVID-19 symptoms and has been fully vaccinated against COVID-19 or had COVID-19 and recovered within the past three months.

Finally, any time an employee is required to be removed from the workplace for any reason described above, the employer may require the employee to work remotely or in isolation if suitable work is available.

Medical Removal Protection Benefits. When an employer allows an employee, who would otherwise be required to be removed, to instead work remotely or in isolation, the employer must continue to pay them the same regular pay and benefits they would have received had they not been absent from work, until the employee meets the return to work criteria.

Other than employers with 10 or fewer employees (such employers are not required to comply with medical removal protection benefits), when an employer removes an employee, the employer must continue to provide the benefits to which the employee is normally entitled and must also pay them the same regular pay they would have received had they not been absent from work, up to \$1,400 per week, until the employee meets the return to work criteria.

For employers with fewer than 500 employees, the employer must pay the employee up to the \$1,400 per week cap. However, beginning in the third week of an employee's removal, the amount is reduced to only two-thirds of the same regular pay the employee would have received had the employee not been absent from work, up to \$200 per day (\$1,000 per week in most cases).

The employer's payment obligation is reduced by the amount of compensation that the employee receives from any other source. This includes a publicly or employer-funded compensation program (e.g., paid sick leave, administrative leave) for earnings lost during the period of removal or any additional source of income the employee receives that is made possible as a result of the employee's removal.

Whenever an employee returns to the workplace after a COVID-19-related workplace removal, they must not be subject to any adverse action as a result of that removal. The employee must maintain all their rights and benefits, including their right to their former job status.

Return to Work. Decisions regarding an employee's return to work after a COVID-19-related workplace removal must be made in accordance with guidance from a licensed health care provider or CDC's "[Isolation Guidance](#)" and CDC's "[Return to Work Healthcare Guidance](#)."

OSHA recognizes that CDC's "[Strategies to Mitigate Healthcare Personnel Staffing Shortages](#)" allows elimination of quarantine for certain health care workers, but only as a last resort, if the workers' absence would mean there are no longer enough staff to provide safe patient care, specific other amelioration strategies have already been tried, patients have been notified, and workers are using additional PPE at all times.

Vaccination

The employer must support COVID-19 vaccination for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination.

Training

The employer must ensure that each employee receives training, in a language and at a literacy level the employee understands, and so that the employee comprehends at least the following:

- COVID-19, including how the disease is transmitted (including pre-symptomatic and asymptomatic transmission), the importance of hand hygiene to reduce the risk of spreading COVID-19 infections, ways to reduce the risk of spreading COVID-19 through the proper covering of the nose and mouth, the signs and symptoms of the disease, risk factors for severe illness, and when to seek medical attention;
- Employer-specific policies and procedures on patient screening and management;
- Tasks and situations in the workplace that could result in COVID-19 infection;
- Workplace-specific policies and procedures to prevent the spread of COVID-19 that are applicable to the employee's duties (e.g., policies on Standard and Transmission-Based Precautions, physical distancing, physical barriers, ventilation, aerosol-generating procedures);

- Employer-specific multi-employer workplace agreements related to infection control policies and procedures, the use of common areas, and the use of shared equipment that affect employees at the workplace;
- Employer-specific policies and procedures for PPE worn to comply with this section, including: when PPE is required for protection against COVID-19; limitations of PPE for protection against COVID-19; how to properly put on, wear, and take off PPE; how to properly care for, store, clean, maintain, and dispose of PPE; and any modifications to donning, doffing, cleaning, storage, maintenance, and disposal procedures needed to address COVID-19 when PPE is worn to address workplace hazards other than COVID-19;
- Workplace-specific policies and procedures for cleaning and disinfection;
- Employer-specific policies and procedures on health screening and medical management;
- Available sick leave policies, any COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, and other supportive policies and practices (e.g., telework, flexible hours);
- The identity of the safety coordinator(s) specified in the COVID-19 plan;
- The requirements of this section; and
- How the employee can obtain copies of this section and any employer specific policies and procedures developed under this section, including the employer's written COVID-19 plan, if required.

OSHA notes that employers may rely on training completed prior to the effective date of this section to the extent that it meets the relevant training requirements in the ETS.

The employer must ensure that each employee receives additional training whenever:

- Changes occur that affect the employee's risk of contracting COVID-19 at work;
- Policies or procedures are changed; or
- There is an indication that the employee has not retained the necessary understanding or skill.

The employer must ensure that the training is overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the employee's job duties. Further, the training must provide an opportunity for interactive questions and answers with a person knowledgeable in the covered subject matter as it relates to the employee's job duties.

Anti-Retaliation

The employer must inform each employee that they have a right to the protections required by the ETS and that employers are prohibited from discharging or in any

manner discriminating against any employee for exercising their right to the protections required by the ETS, or for engaging in actions that are required by the ETS.

Further, the employer must not discharge or in any manner discriminate against any employee for exercising their right to the protections required by the ETS, or for engaging in actions that are required by the ETS.

Requirements Implemented at No Cost to Employees

The implementation of all requirements of the ETS, except for any employee self-monitoring, must be at no cost to employees.

Recordkeeping

Required records. Employers with 10 or fewer employees are not required to comply with these recordkeeping requirements.

Employers with more than 10 employees must retain all versions of the COVID-19 plan implemented while the ETS remains in effect. In addition, such employer is required to establish and maintain a COVID-19 log to record each instance identified by the employer in which an employee is COVID-19-positive, regardless of whether the instance is connected to exposure to COVID-19 at work.

The COVID-19 log must contain, for each instance, the employee's name, one form of contact information, occupation, location where the employee worked, the date of the employee's last day at the workplace, the date of the 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.

The information in the COVID-19 log must be recorded within 24 hours of the employer learning that the employee is COVID-19 positive and must be maintained as though it is a confidential medical record and must not be disclosed except as required by this ETS or other federal law.

The COVID-19 log must be maintained and preserved while the ETS remains in effect.

OSHA notes that the COVID-19 log is intended to assist employers with tracking and evaluating instances of employees who are COVID-19-positive without regard to whether those employees were infected at work. The tracking will help evaluate potential workplace exposure to other employees.

Availability of Records. The employer must provide for examination and copying, by the end of the next business day after a request:

- All versions of the written COVID-19 plan to all of the following: any employees, their personal representatives and their authorized representatives.
- The individual COVID-19 log entry for a particular employee to that employee and to anyone having written authorized consent of that employee.

- A version of the COVID-19 log that removes the names of employees and other identifying information to any employees, their personal representatives and their authorized representatives.
- All records required to be maintained by this section to OSHA.

OSHA notes that employers must continue to record all work-related confirmed cases of COVID-19 on their OSHA Forms 300, 300A, and 301, or the equivalent forms, if they are required to do so.

Reporting COVID-19 Fatalities and Hospitalizations to OSHA

The ETS requires that employers must report to OSHA each work-related COVID-19 fatality within 8 hours of learning about it and each work-related COVID-19 inpatient hospitalization within 24 hours of learning about it.

Incorporation by Reference

OSHA's COVID-19 health care ETS incorporates by reference a number of consensus standards and evidence-based guidelines listed below. OSHA notes that CDC and the Environmental Protection Agency (EPA) may update their guidelines based on the most current available scientific evidence, but OSHA only is requiring compliance with the standards or guidelines incorporated by reference, which are fixed in time at the point of publication, noted below. To enforce any edition other than that specified below, OSHA must publish a document in the Federal Register and the material be available to the public.

- [Cleaning and Disinfecting Guidance](#). COVID-19: Cleaning and Disinfecting Your Facility; Every Day and When Someone is Sick, updated April 5, 2021. This guidance provides direction on cleaning and disinfecting frequently touched surfaces, materials and equipment regularly or when contaminated by a person who is COVID-19-positive using appropriate disinfectants and other equipment.
- [COVID-19 Infection Prevention and Control Recommendations](#). COVID-19: Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic, updated February 23, 2021. This guidance provides recommendations for routine infection prevention and control practices in health care settings to protect health care workers.
- [Guidelines for Isolation Precautions](#). 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, updated July 2019. These guidelines provide direction on developing, implementing, and evaluating infection control programs for health care settings across a variety of care. It also provides guidance on reducing the prevalence of hospital-acquired infections.
- [Guidelines for Environmental Infection Control](#). Guidelines for Environmental Infection Control in Health-Care Facilities, updated July 2019. These guidelines provide evidence-based strategies for the prevention of environmentally

mediated infection among health care workers and immunocompromised patients. Pages 86-103 and 147-149 focus on Environmental Services in healthcare settings.

- [Isolation Guidance](#). COVID-19: Isolation If You Are Sick; Separate yourself from others if you have COVID-19, updated February 18, 2021. This guidance provides steps to take when someone is experiencing COVID-19 symptoms and/or tested positive for COVID-19.
- [Return to Work Healthcare Guidance](#). COVID-19: Return to Work Criteria for Healthcare Personnel with SARS-CoV-2 Infection (Interim Guidance), updated February 16, 2021. These guidelines provide guidance for occupational and public health professionals to develop policies to determine when an employee can return to work after quarantine and/or isolation in health care settings.
- [List N](#). Pesticide Registration List N: Disinfectants for Coronavirus (COVID-19), updated April 9, 2021. The products listed in this list meet EPA's criteria for use against SARS-CoV-2 (COVID-19) to clean and disinfect surfaces.
- [ANSI/ISEA Z87.1-2010](#), [ANSI/ISEA Z87.1-2015](#), [ANSI/ISEA Z87.1-2020](#), [ANSI/ISEA Z87.1 \(2010, 2015, and 2020\)](#), American National Standard for Occupational and Educational Personal Eye and Face Protection Devices, ANSI-approved April 13, 2010, ANSI-approved May 28, 2015, and ANSI-approved March 11, 2020 respectively. These consensus standards, versions dated 2010, 2015, and 2020, provide criteria and requirements for selection, use, and maintenance of the different face and eye protectors to eliminate hazards such as liquid splash and droplets exposures in occupational and educational environments.

[Mini Respiratory Protection Program](#)

OSHA states that the mini respiratory protection program is primarily intended to be used for addressing circumstances where employees are not exposed to suspected or confirmed sources of COVID-19, and therefore the use of a respirator is not required, but where respirator use could offer enhanced protection to employees. The mini respiratory protection program includes fewer requirements than OSHA's normal Respiratory Protection standard. Notably absent are the requirements for medical evaluation, fit testing and a written program.

Scope and Application

This section applies only to respirator use when it is not required by the ETS.

Respirators Provided by Employees

Where employees provide and use their own respirators, the employer must provide each employee with the following notice:

“Respirators can be an effective method of protection against COVID-19 hazards when properly selected and worn. Respirator use is encouraged to provide an additional level

of comfort and protection for workers even in circumstances that do not require a respirator to be used. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. If your employer allows you to provide and use your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard. You should do the following:

(1) Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator's limitations.

(2) Keep track of your respirator so that you do not mistakenly use someone else's respirator.

(3) Do not wear your respirator where other workplace hazards (e.g., chemical exposures) require use of a respirator. In such cases, your employer must provide you with a respirator that is used in accordance with OSHA's respiratory protection standard (29 CFR 1910.134). For more information about using a respirator, see [OSHA's respiratory protection safety and health topics page](#)."

Respirators Provided by Employers

Where employers provide respirators to their employees, the employer must comply with the following requirements:

Training. The employer must ensure that each employee wearing a respirator receives training prior to first use and if they change the type of respirator they use, in a language and at a literacy level the employee understands, and comprehends at least the following:

- How to inspect, put on and remove, and use a respirator;
- The limitations and capabilities of the respirator, particularly when the respirator has not been fit tested;
- Procedures and schedules for storing, maintaining and inspecting respirators;
- How to perform a user seal check as described in paragraph (d)(2) of this section; and
- How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators and what to do if the employee experiences signs and symptoms.

User Seal Check. The employer must ensure that each employee who uses a tight-fitting respirator performs a user seal check to ensure that the respirator is properly seated to the face each time the respirator is put on. The rule describes two acceptable methods of user seal checks, including positive pressure user seal check (i.e., blow air out) and negative pressure user seal check (i.e., suck air in).

The employer must ensure that each employee corrects any problems discovered during the user seal check. The rule describes what to do in the case of either type of user seal check (positive or negative) if air leaks around the nose.

OSHA notes that when employees are required to wear a respirator and a problem with the seal check arises due to interference with the seal by an employee's facial hair,

employers may provide a different type of respirator to accommodate employees who cannot trim or cut facial hair due to religious belief.

Reuse of Respirators. The employer must ensure that a filtering facepiece respirator used by a particular employee is only reused by that employee, and only when:

- The respirator is not visibly soiled or damaged;
- The respirator has been stored in a breathable storage container (e.g., paper bag) for at least five calendar days between use and has been kept away from water or moisture;
- The employee does a visual check in adequate lighting for damage to the respirator's fabric or seal;
- The employee successfully completes a user seal check as described in paragraph (d)(2) of this section;
- The employee uses proper hand hygiene before putting the respirator on and conducting the user seal check; and
- The respirator has not been worn more than five days total.

OSHA notes that it discourages the reuse of single-use respirators (e.g., filtering facepiece respirators).

With regard to an elastomeric respirator or a PAPR, the employer must ensure that these are reused only when:

- The respirator is not damaged;
- The respirator is cleaned and disinfected as often as necessary to be maintained in a sanitary condition in accordance with OSHA's Respiratory Protection Standard; and
- A change schedule is implemented for cartridges, canisters, or filters.

Discontinuing Use of Respirators. Employers must require employees to discontinue use of a respirator when either the employee or a supervisor reports medical signs or symptoms (e.g., shortness of breath, coughing, wheezing, chest pain, any other symptoms related to lung problems, cardiovascular symptoms) that are related to ability to use a respirator. Any employee who previously had a medical evaluation and was determined to not be medically fit to wear a respirator must not be provided with a respirator under this standard unless they are reevaluated and medically cleared to use a respirator.

Effective Date and Enforcement

The ETS was effective immediately upon publication in the Federal Register on June 21, 2021. Employers are required to comply with most provisions by July 6 (14 days after publication in the Federal Register), and with the remaining provisions, including physical barriers, ventilation and training requirements, by July 21 (30 days after publication). OSHA indicates that it will use its enforcement discretion to avoid citing an employer who is making a good faith effort to comply with the ETS.

OSHA states that it will continue to monitor trends in COVID-19 infections and deaths as more of the workforce and the general population become vaccinated and the pandemic continues to evolve. Where OSHA finds a grave danger from the virus no longer exists for the covered workforce (or some portion of it), or new information indicates a change in measures necessary to address the grave danger, OSHA will update the ETS, as appropriate.

Impact of the ETS on State OSHA Plans

When federal OSHA issues an ETS, states and U.S. territories with their own OSHA-approved occupational safety and health plans (state plans) must either amend their standards to be identical or at least as effective as the new standard, or show that their standard is at least as effective as the new federal standard. Adoption of the ETS by state plans must be completed within 30 days of the promulgation date of the federal final rule.

OSHA says that state or local government mandates or guidance (e.g., legislative action, executive order, health department order) that go beyond and are not inconsistent with the ETS are not intended to be limited by this ETS. For example, OSHA does not intend to preempt state or local COVID-19 testing requirements or state or local requirements for visitors to wear face coverings whenever they enter a hospital or other health care facility.

Costs and Benefits of the ETS

OSHA estimates the total costs of the health care ETS to be approximately \$4 billion, and the benefits, in terms of infections and deaths prevented to be approximately \$27 billion, with net benefits approximately \$23 billion.

Enforcement and Penalties

OSHA enforces its regulations and standards by conducting inspections based on priority. The agency has promulgated a National Emphasis Program for COVID-19 related issues, and inspections are likely to be conducted consistent with this program. [Penalty amounts](#) in 2021 are \$13,653 per violation for serious, other-than-serious, and posting requirements violations, \$13,653 per day for failure to abate, and \$136,532 per violation for willful or repeated violations.

Next Steps

The AHA urges hospitals and health systems to submit comments to OSHA. Comments are due by July 21, and may be submitted electronically at www.regulations.gov. Follow

the instructions for “Comment or Submission” and enter the file code “Docket No. OSHA–2020–0004.”

If you have further questions regarding the OSHA ETS interim final rule’s provisions, please contact Roslyne Schulman, director of policy, at rschulman@aha.org or Nancy Foster, vice president for quality and patient safety policy at nfoster@aha.org.