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Compliance Connection

July Part I

OSHA Mandates COVID Action

With all of the information distributed in June, employers may have missed the Occupational Safety and Health Administration (OSHA) guidance regarding measures to reduce the spread of COVID-19 in the workplace. Today we will examine both the non-healthcare (first section) and healthcare information (last section).

OSHA Updates Mitigation and Prevention Guidance for COVID-19

On June 10, 2021, OSHA updated its [guidance](#) on mitigating and preventing the spread of COVID-19 in the workplace. The guidance applies to employers and employees in settings outside of the health care industry and is now focused only on protecting unvaccinated or otherwise at-risk employees in their workplaces.

Employers can use this OSHA guidance to help them take the appropriate steps to prevent exposure and infection of unvaccinated or otherwise at-risk employees.

According to OSHA, most employers no longer need to take steps to protect their fully vaccinated employees who are otherwise not at risk from COVID-19 exposure unless otherwise required by federal, state or local laws.

This guidance contains recommendations as well as descriptions of **mandatory safety and health standards**, which are labeled "mandatory OSHA standard(s)" in bold. The recommendations are advisory in nature, informational in content and intended to provide a safe and healthy workplace free from recognized hazards that are causing or likely to cause death or serious physical harm. This Compliance Bulletin reviews the OSHA recommendations for unvaccinated or otherwise at-risk employees.

Action Steps

Under the guidance, employers with unvaccinated or otherwise at-risk employees should update their COVID-19 prevention plans to provide policies and procedures for those specific employees to follow. Employers should also review the guidance for vaccinated employees working with unvaccinated employees and update their policies and procedures accordingly.

COVID-19 Prevention Program

OSHA asserts that the most effective way to mitigate the spread of COVID-19 at work is for employers to implement a workplace prevention program. For this reason, OSHA provides this guidance for

employers as recommendations to use in protecting unvaccinated or at-risk employees. Employers and employees should use this guidance to determine which appropriate control measures to implement within their workplace to protect against spreading COVID-19.

If a workplace has fully vaccinated employees, OSHA recommends the employer follow the U.S. Centers for Disease Control and Prevention (CDC) [Interim Public Health Recommendations for Fully Vaccinated People](#). These recommendations explain when fully vaccinated people need to take the same precautions that unvaccinated employees should take.

Employers with unvaccinated or at-risk employees should follow the recommended precautions and policies at their workplace. OSHA's guidance outlines key elements for an effective COVID-19 prevention program for those that are unvaccinated and otherwise at-risk, as described in the sections below.

At-risk employees are those who do not have a full immune response to the vaccination due to weakened immune systems from underlying medical conditions.

Multi-layered Interventions

Under the guidance, employers should engage with employees and their representatives to determine how to implement multi-layered interventions to protect unvaccinated or otherwise at-risk employees and mitigate the spread of COVID-19.

Some of these interventions include:

- Granting paid time off for employees to get vaccinated;
- Instructing employees who test positive, or have symptoms or have been exposed to someone with a positive COVID-19 test to stay home;
- Implementing physical distancing for unvaccinated and at-risk employees in communal areas;
- Providing unvaccinated and at-risk employees with face coverings and personal protective equipment (PPE) if required;
- Educating and training employees on COVID-19 policies and procedures;
- Suggesting that unvaccinated customers, visitors or guests wear face coverings;
- Maintaining ventilation systems;
- Cleaning and disinfecting work areas;
- Recording and reporting COVID-19 infections and deaths; and
- Implementing retaliation protections.

Vaccinations

Under the guidance, employers should take steps to make it easier for workers to get vaccinated. OSHA and other federal agencies are working diligently to ensure access to COVID-19 vaccinations. Businesses with fewer than 500 employees may be eligible for [tax credits under the American Rescue Plan](#) if they provide paid time off for employees who decide to receive the vaccine or need to recover from vaccination side effects.

Removal From the Workplace

To prevent the spread and risk of transmitting COVID-19, the guidance instructs that employers should require employees to stay or work from home if they are infected, unvaccinated and have had close contact with someone who has tested positive for COVID-19, or exhibit COVID-19 symptoms. Employers should ensure that these removal policies are non-punitive. Similarly, employers should eliminate or revise policies that encourage employees to come to work sick or after they have been exposed to COVID-19 (if unvaccinated).

Businesses with **fewer than 500 employees** may be eligible for refundable tax credits under the American Rescue Plan if they provide paid time off for sick and family leave to their employees due to

COVID-19 related reasons. The ARP tax credits are available to eligible employers that provide paid sick and family leave for qualified leave from April 1, 2021, through Sept. 30, 2021.

Physical Distancing

A key way to protect unvaccinated or otherwise at-risk employees is for employers to physically distance these employees from other unvaccinated or otherwise at-risk individuals (employees, visitors, contractors, vendors, customers). Generally, at least six feet of distance is recommended, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces. Employers could also limit the number of unvaccinated or otherwise at-risk employees in one place at any given time by:

- Implementing flexible worksites, such as telework;
- Implementing flexible work hours by rotating or staggering shifts to limit the number of such employees in the workplace at the same time;
- Delivering services remotely; or
- Implementing flexible meeting and travel options, all for such employees.

At fixed workstations where unvaccinated or otherwise at-risk employees are not able to remain at least 6 feet away from other people, transparent shields or other solid barriers (for example, fire-resistant plastic sheeting or flexible strip curtains) can separate these employees from others. Barriers should block face-to-face pathways between individuals to prevent direct transmission of respiratory droplets, and any openings should be placed at the bottom and made as small as possible. The posture (sitting or standing) of users and the [safety of the work environment](#) should be considered when designing and installing barriers, as should the need for enhanced ventilation.

Face Coverings

Employers should provide face coverings to unvaccinated and otherwise at-risk employees at no cost to the employees. Under federal anti-discrimination laws, employers may need to provide [reasonable accommodations](#) under Title VII of the Civil Rights Act for employees who are unable to wear or have difficulty wearing certain types of face coverings due to a disability or religious reasons. In workplaces with employees who are deaf or hard of hearing, employers should consider acquiring masks that facilitate lip-reading.

Unvaccinated and otherwise at-risk employees should wear a face covering that covers the nose and mouth to contain the wearer's respiratory droplets. Properly wearing adequate face coverings protects the wearer and others. Face coverings should be made of at least two layers of a tightly woven breathable fabric, such as cotton, and should not have exhalation valves or vents. They should fit snugly over the nose, mouth and chin, with no large gaps on the outside of the face. The CDC provides [general guidance on face coverings and masks](#).

Unless otherwise provided by federal, state or local requirements, unvaccinated workers who are outdoors may opt not to wear face coverings unless they are at-risk, such as if they are immunocompromised. Regardless, all workers should be supported to continue face-covering use if they choose, especially to work closely with other people safely.

For operations where the face covering can become wet and soiled, employers must provide unvaccinated and otherwise at-risk employees with replacements daily or more frequently, as needed. Face shields may be provided for use with face coverings to protect them from getting wet and soiled, but they do not provide protection by themselves.

In settings where face coverings may increase the [risk of heat-related illness](#), whether [indoors](#) or [outdoors](#), or cause safety concerns due to the introduction of a hazard, employers may wish to consult with an occupational safety and health professional to help determine appropriate face covering or respirator use.

In public-facing workplaces such as retail establishments, if there are unvaccinated or otherwise at-risk employees in the workplace who are likely to interact with customers, visitors or guests, the employer should suggest that face coverings should be worn. This can be done by posting a notice or otherwise suggesting unvaccinated people wear face coverings, even if no longer required by your jurisdiction. Individuals who are under the age of 2 or are actively consuming food or beverages on-site do not need to wear face coverings.

Personal Protective Equipment

When an employer determines that PPE is necessary to protect unvaccinated and otherwise at-risk employees, the employer must provide PPE in accordance with relevant **mandatory OSHA [standards](#)** and consider providing PPE in adherence to other [industry-specific guidance](#).

Respirators, if necessary, must be provided and used in compliance with 29 CFR 1910.134 (for example, medical determination, fit testing and training on its correct use), including certain provisions for voluntary use when workers supply their own respirators. Other PPE must be provided and used in accordance with the applicable standards in 29 CFR 1910, Subpart I (e.g., 1910.132 and 133).

There are times when PPE is not called for by OSHA standards or other industry-specific guidance, but some workers may have a legal right to PPE as a reasonable accommodation under the Americans with Disabilities Act (ADA). Employers are encouraged to proactively inform these employees about how to make such a request.

Other workers may want to use PPE if they are still concerned about their personal safety (e.g., if a family member is at a higher risk for severe illness, they may want to wear a face shield in addition to a face covering as an added layer of protection). Encourage and support voluntary use of PPE in these circumstances and ensure the equipment is adequate to protect the worker.

Education and Training

Under the guidance, employers should train their managers on how to implement COVID-19 policies. Supportive workplace policies should be communicated clearly, frequently and via multiple methods to promote a safe and healthy workplace. Communications should be in plain language so employees can understand. Employers may need to consider providing education and training in other languages, including American Sign Language. As applicable, employers should also consider methods to make education and training accessible to individuals with disabilities.

Education and training should be directed to employees, contractors and any other individuals on site. Education and training should include:

- Basic facts about COVID-19, including how it is spread and transmitted;
- The importance of physical distancing, including remote work;
- Ventilation;
- Vaccination;
- Use of face coverings;
- Hand hygiene; and
- Workplace policies and procedures implemented to protect employees from COVID-19 hazards.

Ventilation Systems

Improving ventilation indoors is a key engineering control that can be used as part of a layered strategy to reduce the concentration of viral particles in indoor air and the risk of virus transmission to unvaccinated employees in particular. Some measures to improve ventilation are discussed in the [CDC's Ventilation in Buildings](#) and in the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#). These recommendations are based on [ASHRAE Guidance for Building Operations During the COVID-19 Pandemic](#). Adequate ventilation will protect all people in a closed space.

Key measures include:

- Ensuring the HVAC system is operating in accordance with the manufacturer's instructions and design specifications;
- Conducting all regularly scheduled inspections and maintenance procedures;
- Maximizing the amount of outside air supplied;
- Installing air filters with a [Minimum Efficiency Reporting Value \(MERV\) 13](#) or higher, where feasible;
- Maximizing natural ventilation in buildings without HVAC systems by opening windows or doors, when conditions allow (if that does not pose a safety risk); and
- Considering the use of portable air cleaners with High-Efficiency Particulate Air (HEPA) filters in spaces with high occupancy or limited ventilation.

Cleaning and Disinfection Protocol

If an employee, customer or visitor who has been in the facility within 24 hours is [suspected of having or confirmed to have COVID-19](#), follow the CDC [cleaning and disinfection recommendations](#).

Employers must follow requirements in the **mandatory OSHA standards** for [hazard communication](#) and [PPE](#) appropriate for exposure to cleaning chemicals.

Reporting and Recording COVID-19 Cases

Under **mandatory OSHA standards** in **29 CFR 1904**, employers are responsible for recording work-related cases of COVID-19 illness on OSHA's [Form 300 logs](#) if the following requirements are met:

- The case is a confirmed case of COVID-19;
- The case is [work-related](#) (as defined by 29 CFR 1904.5); and
- The case involves one or more relevant recording criteria (set forth in 29 CFR 1904.7) (for example, medical treatment, days away from work).

Employers must follow the OSHA standard Recordkeeping Forms and Recording Criteria (29 CFR 1904) when [reporting COVID-19 fatalities and hospitalizations to OSHA](#). Employers should also report outbreaks to their health department as required and support their contact tracing efforts.

However, OSHA and other federal agencies are working diligently to encourage COVID-19 vaccinations. OSHA does not want to give any suggestion of discouraging employees from receiving COVID-19 vaccination or disincentivizing employers' vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. OSHA will reevaluate the agency's position at that time to determine the best course of action moving forward. Individuals may choose to submit adverse reactions to the federal [Vaccine Adverse Event Reporting System](#).

Retaliation Protections

Employers should be aware that OSHA prohibits reprisal or discrimination against an employee for speaking out about unsafe working conditions or reporting an infection or exposure to COVID-19 to an employer. In addition, the **mandatory OSHA standard** for employee involvement (29 CFR 1904.35(b)) also prohibits discrimination against an employee for reporting a work-related illness.

Under [Section 11\(c\) of the OSH Act](#), discharging or in any other way discriminating against an employee for engaging in various occupational safety and health activities is prohibited. Examples of violations could include:

- Discriminating against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency or to the public, such as through print, online, social or any other media; or
- Discriminating against an employee for voluntarily providing and safely wearing their own PPE, such as a respirator, face shield, gloves, or surgical mask.

In addition to notifying employees of their rights to a safe and healthful work environment, employers should ensure that employees know whom to contact with questions or concerns about workplace safety and health. Employees should also be informed that there are prohibitions against retaliation for raising workplace safety and health concerns or engaging in other protected occupational safety and health activities. Employers can also consider using a hotline or other method for employees to voice concerns anonymously.

Safety Measures for High-risk Workplaces With Mixed Vaccination Employees

Employers should take additional steps to mitigate the spread of COVID-19 for unvaccinated and otherwise at-risk employees in workplaces. High-risk workplaces are those that have a heightened risk of infection due to the following factors:

- Close contact;
- Prolonged duration of contact;
- Type of contact (for example, airborne droplets or contaminated surfaces);
- Employer-provided transportation; and
- Communal housing.

In high-risk workplaces like manufacturing, meat and poultry processing, high-volume retail, and grocery and seafood-processing establishments, employers should use best practices to protect unvaccinated or otherwise high-risk employees. These recommendations are in addition to the precautions described above.

Employers can stagger break times in these generally high-population workplaces or provide temporary break areas and restrooms to avoid groups of unvaccinated or at-risk employees congregating during breaks. Unvaccinated or at-risk employees should maintain at least 6 feet of distance at all times. Arrival and departure times can also be staggered to avoid congregations of unvaccinated or at-risk employees in parking areas, locker rooms and near time clocks. Employers can use visual cues to help keep employees physically distanced.

Employers should limit, if possible, unvaccinated or at-risk employees in vehicles. These employees should be told of the risks of traveling with others closely in the vehicle and should wear appropriate face coverings when in a vehicle with others.

Employers should implement strategies tailored to their workplace to improve ventilation that protects employees as outlined in the CDC's [Ventilation in Buildings](#) and the [OSHA Alert: COVID-19 Guidance on Ventilation in the Workplace](#).

Processing or Assembly Line Precautions

Proper spacing of unvaccinated or at-risk employees can help reduce the risk of virus exposure because these workplaces have often been designed for a number of employees to stand next to or across from each other to maximize productivity.

Retail Workplaces

Employers should suggest masks for unvaccinated (or unknown status) customers or visitors. Physical distancing should be used if possible from people who are not known to be fully vaccinated. If this is not possible, then employers should consider the use of barriers between work stations for the unvaccinated or at-risk employees and for the locations customers will stand, with pass-through openings at the bottom, if applicable.

Employers can move the electronic payment terminal (credit card reader) farther away from unvaccinated or at-risk employees to increase the distance between customers and such employees, if possible. Primary stocking activities can be shifted for unvaccinated or at-risk employees to off-peak or

after-hour times to reduce contact between unvaccinated or otherwise at-risk employees and customers.

OSHA's COVID-19 Healthcare Emergency Temporary Standard

On June 10, 2021, OSHA announced its [COVID-19 Healthcare Emergency Temporary Standard \(ETS\)](#). The ETS was developed to protect health care and health care support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present. **The ETS is effective June 21, 2021.**

Covered employers include hospitals, nursing homes and assisted living facilities; emergency responders; home health care workers and employees in ambulatory care settings where suspected or confirmed coronavirus patients are treated.

The ETS requires covered health care employers to develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace and encourage vaccinations and respirator use when needed. This Compliance Bulletin reviews the requirements of the OSHA COVID-19 ETS for health care.

Action Steps

Health care employers should familiarize themselves with OSHA's new COVID-19 ETS. Employers subject to the ETS requirements must implement all policies, measures and procedures necessary for compliance with the new standard. Employers are encouraged to visit OSHA's [COVID-19 Healthcare ETS website](#) for compliance guidance and resources.

Employers should continue to monitor OSHA communications for updates on workplace safety and health issues.

Employers Subject to the ETS

The ETS applies to all settings where employees provide health care services or health care support services, **except for**:

- The provision of first aid by an employee who is not a licensed health care provider;
- The dispensing of prescriptions by pharmacists in retail settings;
- 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;
- Well-defined hospital ambulatory 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 permitted to enter those settings;
- 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;
- Health care support services not performed in a health care setting (off-site laundry, off-site medical billing, for example); and
- Telehealth services performed outside of a setting where direct patient care occurs.

OSHA does not intend to preclude employers of employees who are unable to be vaccinated from the scope of the well-defined hospital ambulatory care and home health care settings. Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients, or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (for example telework or working in isolation), that employer may be within the exemption of the well-defined hospital ambulatory care and home health care settings.

Where a health care setting is embedded within a non-health care setting (such as a medical clinic in a manufacturing facility or a walk-in clinic in a retail setting), the health care section of the ETS applies only to the embedded healthcare setting and not to the remainder of the physical location. Where emergency responders or other licensed health care providers enter a non-health care setting to provide health care services, this section applies only to the provision of the health care services by that employee (emergency responders or other licensed health care providers).

However, personal protective equipment (PPE), physical distancing and physical barriers do not apply to employees who are fully vaccinated in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present.

Finally, the implementation of ETS requirements, with the exception of any employee self-monitoring conducted before the start of each work day and shift, must be at no cost to employees. State or local government mandates or guidance still apply even if those requirements go beyond the requirements of the ETS, but they must not be inconsistent with the ETS.

COVID-19 Plan

Employers must develop and implement a COVID-19 plan for each workplace. Employers with more than 10 employees are required to have a written COVID-19 plan. Employers with multiple workplaces that are substantially similar may develop their COVID-19 plans by workplace type, rather than by individual workplace, so long as all required site-specific information is included in the plan.

Employers must designate one or more workplace **COVID-19 safety coordinators** to implement and monitor the COVID-19 plan developed under the ETS. The COVID-19 safety coordinator must be knowledgeable in control principles and practices as they apply to the workplace and employee job operations. The identity of the safety coordinator must be documented in any written COVID-19 plan. The safety coordinator must have the authority to ensure compliance with all aspects of the COVID-19 plan.

Employers must conduct a workplace-specific **hazard assessment** to identify potential workplace hazards related to COVID-19. In order for an employer to be exempt from providing controls in a well-defined area with fully vaccinated employees, the COVID-19 plan must include policies and procedures to determine an employee's vaccination status.

Employers must seek input and involvement of non-managerial employees and their representatives in the hazard assessment and during the development and implementation of their COVID-19 plan. Employers must monitor each workplace to ensure the ongoing effectiveness of their COVID-19 plans and update them as needed. COVID-19 plans must address the hazards identified by the assessment and include policies and procedures to:

- Minimize the risk of COVID-19 transmission for each employee. Although the employer's 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. They must also coordinate to ensure that each of their employees is protected and adjust their COVID-19 plans to address any particular COVID-19 hazards presented by the other employees. This requirement does not apply to delivery people, messengers or 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 the location that do not meet the requirements of this section.

- Protect employees who in the course of their employment enter into private residences or other physical locations controlled by a person not covered by the Occupational Safety and Health Act (OSH Act). This must include procedures for employee withdrawal from that location if those protections are inadequate.

Employers must develop and implement policies and procedures to adhere to the U.S. Centers for Disease Control and Prevention's (CDC) [Guidelines for Isolation Precautions](#).

Patient Screening and Management

In settings where direct patient care is provided, employers must:

- Limit and monitor the points of entry to the setting. This provision does not apply where emergency responders or other licensed health care providers enter a non-health care setting to provide health care services.
- Screen and triage all clients, patients, residents, delivery people and other visitors and other non-employees entering the setting.
- Implement other applicable patient management strategies in accordance with the CDC's [COVID-19 Infection Prevention and Control Recommendations](#).

Employers are encouraged to use telehealth services where available and appropriate in order to limit the number of people entering the workplace.

PPE Requirements

Employers are required to provide, and ensure that employees wear, facemasks (surgical, medical procedure, dental or isolation masks that are approved by the Food and Drug Administration and wear them over their mouth and nose when indoors or occupying a vehicle with other people for work purposes.

Employees must change their facemasks at least once per day—or more frequently, as necessary, whenever they are soiled or damaged. Employers must provide a sufficient number of facemasks so employees can change facemasks as required.

Exceptions

Exceptions to the facemask requirements include:

- When an employee is alone in a room.
- While employees are eating and drinking at the workplace, provided each employee is **at least six feet away** from other persons or separated from other people by a physical barrier.
- When employees are wearing respiratory protection in accordance with OSHA's [respiratory protection program](#) (29 CFR 1910.134) or the ETS.
- When it is important to see a person's mouth (communicating with hearing impaired individuals) and the conditions do not permit a facemask that is constructed of clear plastic. In those situations, employers must ensure that employees wear an alternative means to protection, such as a face shield, if the conditions permit it.
- When employees cannot wear facemasks due to a medical necessity, medical condition or disability as defined in the Americans with Disabilities Act (ADA) or due to religious belief. OSHA has indicated that exceptions must be provided for a narrow subset of persons with a disability if they cannot wear a facemask or cannot safely wear a facemask because of a disability under the ADA. The remaining subset of people who cannot wear a mask may be exempted on a case-by-case basis as required by the ADA. In all such situations, employers must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also 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 of serious injury or death to an employee. In these situations, employers must ensure that each employee wears an alternative means of protection (for example, a face shield), if the conditions permit it. Any employee not wearing a face mask must remain at least six feet away from all other people unless the employer can demonstrate physical distancing is not feasible. Employees must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard.

Employers may determine that the use of face shields, without facemasks, in certain settings is not appropriate due to other infection control concerns. Where a face shield is required, employers must ensure that face shields are cleaned at least daily and are not damaged. When employees bring their own face shields, employers may allow them to use them and employers are not required to reimburse the employees for those face shields.

PPE During COVID-19 Exposure

When employees are exposed to a person with suspected or confirmed COVID-19, or for aerosol-generating procedures performed on a person with suspected or confirmed COVID-19, employers must provide:

- A respirator to each employee and ensure that it is provided and used in accordance with the [respiratory protection program](#); and
- Gloves, an isolation gown or protective clothing and eye protection to each employee and ensure that the PPE meets the ETS requirements.

When there is a limited supply of filtering facepiece respirators, employers may follow CDC's [Strategies for Optimizing the Supply of N95 Respirators](#).

Employers may provide respirators to their employees instead of a facemask as required by the ETS. In such circumstances, employer must also comply with the ETS mini respiratory protection program (§ 1910.504). In addition, employers must provide protective clothing and equipment (respirators, gloves, gowns, goggles, face shields) to each employee in accordance with the standard and transmission-based precautions in health settings in accordance with the CDC's Guidelines for Isolation Precautions.

Aerosol-generating Procedures for Suspected or Confirmed COVID-19

When an aerosol-generating procedure is performed on a person with suspected or confirmed COVID-19, employers must:

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

Physical Distancing and Barriers

Employers must ensure that each employee is separated from other people by **at least six feet** when indoors unless they can demonstrate that such physical distancing is not feasible for a specific activity. This requirement does not apply to momentary exposure while people are in movement (passing in hallways or aisles).

When establishing six feet of physical distancing is not possible, employers must ensure that their employees are as far apart as possible from all other employees. OSHA suggests that physical distancing can be achieved through any or all of the following measures:

- Telehealth;
- Telework or other remote work arrangements;

- Reducing the number of people, including non-employees, in an area at one time;
- Visual cues such as signs and floor markings to indicate where employees and others should be located, or to indicate their direction and path of travel;
- Staggered arrivals, departures, and work and break times; and
- Adjusted work processes or procedures to allow great distance between employees.

At each fixed work location outside of direct patient care areas (entryway/lobby, check-in desk, triage, hospital pharmacy windows, bill payment) where each employee is not separated from all other people by at least six feet, employers must install cleanable or disposable solid barriers. An exception is possible for employers that can demonstrate that installing barriers is not feasible. Barriers must be sized 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. 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, employers must follow standard practices for cleaning and disinfecting surfaces and equipment in accordance with the CDC's [COVID-19 Infection Prevention and Control Recommendations](#) and the [Guidelines for Environmental Infection Control](#).

In all other areas, employers must:

- Clean high-touch surfaces and equipment at least once a day, following manufacturers' instructions for application of cleaners; and
- Clean and disinfect, in accordance with CDC's [Cleaning and Disinfecting Guidance](#), any areas, materials and equipment under the employer's control when the employer is aware that an employee who is COVID-19 positive has been in the workplace within the last 24 hours.

Employers must provide alcohol-based hand rub that is at least 60 percent alcohol, or provide readily accessible hand washing facilities.

Ventilation

Employers that own or control buildings or structures with existing heating, ventilation and air conditioning (HVAC) systems 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.

Employers that have an existing airborne infection isolation room (AIIR) must maintain and operate it in accordance with its design and construction criteria. The ETS does not require installation of new HVAC systems and AIIRs. Employers should, however, consider other measures to improve ventilation in accordance the CDC's [Ventilation Guidance](#). This can include maximizing ventilation in buildings without HVAC systems or in vehicles.

Health Screening and Medical Management

Employers 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 employers. Employers that require COVID-19 tests for screening purposes must provide these tests at no cost to the employees.

Screening

Employers must require each employee to promptly notify them when the employee:

- Is COVID-19 positive (confirmed positive test for, or has been diagnosed by a licensed health care provider with, COVID-19);
- Has been told by a licensed health care provider that they are suspected to have COVID-19;
- Is experiencing recent loss of taste or smell with no other explanation; or
- Is experiencing both a fever equal to or greater than 100.4 degrees Fahrenheit and a new unexplained cough associated with shortness of breath.

Employer Notification of COVID-19 Exposure

Employers that receive notification that a person who has been in their workplace is COVID-19 positive must complete the following requirements **within 24 hours**. The requirement applies regardless of whether the infected individual is an employee or a client, patient, resident, vendor, contractor, customer, delivery person, visitor or other non-employee.

- Notify each employee who has been in close contact with a COVID-19 positive individual. This requirement applies to employees who were not wearing a respirator or any other required PPE and have been in close contact with that person in the workplace. The notification must state 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 or any other required PPE and worked in a well-defined portion of a workplace in which the positive COVID-19 person was present during the potential transmission period. **The potential transmission period runs from two days before the person felt sick (or, for asymptomatic people, two days prior to test specimen collection) until the time the person is isolated.** The notification must specify the dates the person with COVID-19 was in the workplace during the potential transmission period.
- Notify other employers whose employees were not wearing respirators or any other required PPE and were in close contact with the COVID-19-positive person, or worked in a well-defined portion of a workplace (for example, a particular floor) in which that person was present, during the potential transmission period (as described above). The notification must specify the dates the person with COVID-19 was in the workplace during the potential transmission period and the locations where the person with COVID-19 was in the workplace.

Notifications must not include any employee names, contact information (phone number, email address) or occupation. 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 (emergency rooms, urgent care facilities, COVID-19 testing sites, COVID-19 wards in hospitals).

Medical Removal from the Workplace

Employers are required to remove employees from the workplace when employers know that the employees:

- Are COVID-19 positive, meaning that they were confirmed positive for, or were diagnosed by a licensed healthcare provider with, COVID-19;
- Have been told by a healthcare provider that they are suspected to have COVID-19;
- Are experiencing recent loss of taste or smell, with no other explanation;

- Are experiencing both fever ($\geq 100.4^{\circ}\text{ F}$) and a new unexplained cough associated with shortness of breath; or
- Are required to be notified by the employer of close contact in the workplace to a person who is COVID-19 positive, UNLESS the employee has been fully vaccinated against COVID-19 (i.e., two weeks or more have passed following the final dose), or had COVID-19 and recovered within the past three months, AND the employee does not experience the symptoms listed above.

Employers must remove these employees from the workplace and keep these employees removed until the employees meet return-to-work criteria based on guidance from a licensed health care provider or applicable guidance from the CDC, unless state or local public health authorities specify a longer period of removal.

For cases when employee infection is not confirmed or diagnosed, employers may allow employees to return to work immediately after a negative COVID-19 polymerase chain reaction (PCR) test. The PCR test must be provided at no cost to the employees.

Employers may choose to go beyond the minimum requirements of the ETS. For example, they may choose to remove employees who (1) are experiencing symptoms other than recent loss of taste and/or smell or fever coupled with new unexplained cough and shortness of breath, (2) were exposed to a COVID-19-positive person outside of the workplace, or (3) were notified by a state or local public health authority to quarantine or isolate. Although the ETS does not require removal in those situations, the state or local public health authority may impose separate obligations or the employer might choose to remove employees in those circumstances, above and beyond what is required by this ETS.

Medical Removal Protection Benefits

The ETS creates medical removal protection (MRP) benefits for employees who are required to quarantine because of COVID-19. MRP benefits require employers to continue paying removed employees the same regular pay and benefits the employee would have received had the employee not been removed. The benefits must continue until employees meet the return-to-work criteria or the medical removal expires.

Obligations to pay the removed employee depend on the size of the employer:

- Employers with **10 or fewer employees** on the date that the ETS becomes effective are not required to maintain pay for removed employees.
- Employers with **fewer than 500 employees** must pay the employee's regular pay, up to \$1400 per week, for the first two weeks that the employee is removed. Beginning in the third week, if the employee's removal continues that long, the employer must pay two-thirds of the same regular pay the employee would have received if working, up to \$200 a day (equivalent to \$1000 per week in most cases).
- Employers with **500 or more employees** must pay the employee's salary up to \$1400 per week during the entire period of removal, until the employee meets the return-to-work criteria described below.
- Employers with **more than 10 employees** must also continue to provide the benefits to which the employee is normally entitled (e.g., employer-sponsored health insurance) during the removal period.

In each scenario, the employer is not required to provide overtime pay, even if the employee had regularly worked overtime hours in recent weeks. In addition, if the employee receives compensation for lost earnings from any other source, such as employer-paid sick leave, administrative leave or a publicly funded compensation program, then the employer may reduce the amount paid to the removed employee by however much the employee receives from the outside source.

In addition, the obligation to pay MRP benefits ceases when the employee meets the ETS return criteria, even when employers choose to require a longer removal period.

Please note that businesses with fewer than 500 employees may be eligible for refundable tax credits under the American Rescue Plan (ARP) if they provide paid time off for sick and family leave to their employees due to COVID-19-related reasons. The ARP tax credits are available to eligible employers that pay sick and family leave for qualified leave from April 1, 2021, through Sept. 30, 2021. More information is [available from the IRS](#).

Return to Work

Employers must make return-to-work decisions in accordance with guidance from a licensed healthcare provider or applicable guidance from the CDC, which is incorporated by reference in the ETS, unless state or local public health authorities specify a longer period of removal.

However, OSHA recognizes that the 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 utilizing additional PPE at all times.

Vaccinations

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

Training

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

- How the COVID-19 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 (for example, 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 protect against COVID-19, including when PPE is required; limitations of PPE for protection; how to properly put on, wear, take off, care for, store, clean, maintain and dispose of PPE, and any modifications to donning, doffing and 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 (for example, telework, flexible hours);
- The identity of the safety coordinators specified in the COVID-19 plan;

- 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.

Employers can rely on training that has been completed prior to the effective date of the ETS as long as it meets the relevant training requirements. Employees must receive additional training whenever changes occur that affect an employee's risk of contracting COVID-19 at work (for example, new job tasks), policies and procedures are changed or there is an indication that the employee has not retained the necessary understanding or skill.

Employers 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. The training provided must provide an opportunity for interactive questions and answers with a person knowledgeable in the covered subject matter as it relates to the employer's job duties.

Anti-Retaliation

Employers 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 this section. Employers must not discharge or in any way 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.

In addition, [section 11\(c\)](#) of the OSH Act also prohibits employers from discriminating against an employee for exercising rights under, or as a result of actions that are required by, this section. That provision of the Act also protects the employee who files a safety and health complaint, or otherwise exercises any rights afforded by the OSH Act.

Recordkeeping and Reporting

Employers with **ten or more employees** on the effective date of the ETS must:

- Retain all versions of the COVID-19 plan implemented to comply with this section while this section remains in effect.
- 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;
- The employee's contact information;
- The employee's occupation;
- The 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 the ETS or other federal law. The COVID-19 log must be maintained and preserved while this section remains in effect. 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

By the end of the next business day after a request, employers must provide, for examination and copying:

- All versions of the written COVID-19 plan to 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, 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, to any employees, their personal representatives, and their authorized representatives.
- All records required to be maintained by this section to the Assistant Secretary of OSHA.

Employers with **10 or fewer employees** on the effective date of this section are not required to comply with these requirements.

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 required to do so under OSHA's recordkeeping [requirements](#).

Reporting COVID-19 Fatalities and Hospitalizations

Employers must report to OSHA each work-related COVID-19 fatality **within eight hours** of the employer learning about the fatality. Each work-related COVID-19 inpatient hospitalization must be reported to OSHA **within 24 hours** of the employer learning about the inpatient hospitalization.

When reporting COVID-19 fatalities and inpatient hospitalizations to OSHA in accordance with this section, the employer must follow the requirements in [1904.39](#), except for 29 CFR part 1904.39(a)(1) and (2) and (b)(6).

Mini Respiratory Protection Program

The mini respiratory protection program (29 CFR 1910.504) is a section of the COVID-19 ETS. It applies only in certain circumstances specified under the ETS, generally when workers are not exposed to suspected or confirmed sources of COVID-19 but where respirator use could offer enhanced worker protection. The mini respiratory protection program provides a limited set of requirements for the safe use of respirators.

OSHA's normal [respiratory protection standard](#) (29 CFR 1910.134) still applies to:

- Circumstances under the ETS when workers are exposed to suspected or confirmed sources of COVID-19
- Any other workplace hazards that might require respiratory protection (e.g., respirable crystalline silica, asbestos or airborne infectious agents such as *Mycobacterium tuberculosis*)

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:

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

- *Keep track of your respirator so that you do not mistakenly use someone else's respirator.*
- *Do not wear your respirator where other workplace hazards (for example, 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 part 1910.134).*

Employer-provided Respirators

When employers provide employees with respirators, employers must ensure that each employee wearing a respirator receives training prior to first use and if they change the type of respirator, in a language and at a literacy level the employee understands. Employers must make sure their employees at a minimum comprehend the following:

- Training on how to inspect, put on, 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 under the mini respiratory protection program; 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.

Employers must ensure that each employee who uses a tight-fitting respirator performs a user seal check to ensure that the respirator is properly sealed to the face each time the respirator is put on.

Acceptable methods of user seal checks include:

- Positive pressure user seal check by trying to blow air out.
- Negative pressure user seal check by sucking air in.

Employers must ensure that each employee corrects any problems discovered during the user seal check. In the case of either type of user seal check (positive or negative), if air leaks around the nose, the employee should use both hands to readjust how the respirator sits on their face or adjust the nosepiece, if applicable. The employee should readjust the straps along the sides of their head until a proper seal is achieved.

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.

Employers 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 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;
- 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.

The reuse of single-use respirators is discouraged. Employers must ensure that an elastomeric respirator or power air-purifying respirator (PAPR) is only reused 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 the [respiratory protection program](#) (29 CFR 1910.134) and [appendix B-2](#); and

- A change schedule is implemented for cartridges, canisters or filters.

Employers must require employees to discontinue use of a respirator when either the employee or a supervisor reports medical signs or symptoms (for example, 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.

The mini respiratory protection program is effective as of the date the ETS is published in the Federal Register.

Source: Occupational Safety and Health Administration

Disclaimer:

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