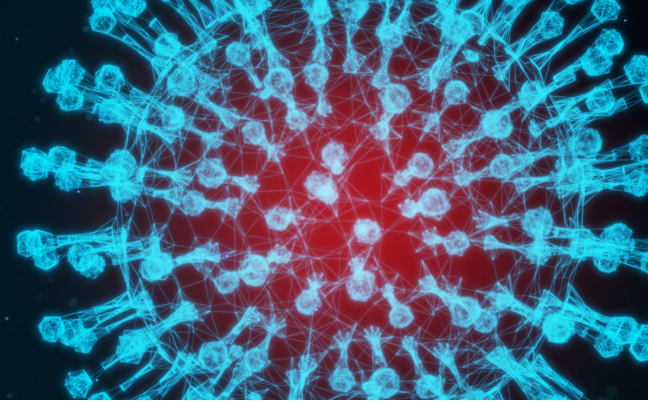


# Highlights — The COVID-19 Healthcare Emergency Temporary Standard (ETS)



## WHY DID OSHA PROMULGATE AN EMERGENCY TEMPORARY STANDARD TO PROTECT HEALTHCARE WORKERS?

The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) on June 10, 2021, designed to reduce exposure risks to healthcare workers to the SARS-CoV-2 virus in settings where people with COVID-19 are reasonably expected to be present.

Employee complaints from healthcare workers included concerns over the lack of personal protective equipment and respirators while working with the infected. For the first time ever, healthcare workers were extending the life of single use respiratory protection products by re-wearing the same N95 for days. Wearing them after new disinfection procedures and wearing defective or handmade face visors at times. All of this in conjunction with the fact that millions of people were infected and over 600,000 people killed from the virus (CDC, May 24, 2021) has OSHA classifying this healthcare workers hazard as “grave.”

**OSHA has determined that employee exposure to this new hazard, SARS-CoV-2 (the virus that causes COVID-19), presents a grave danger to workers in all healthcare settings** in the United States and its territories where people with COVID-19 are reasonably expected to be present.

This **finding of grave danger is based on the science of how the virus spreads and the elevated risk in workplaces where COVID-19 patients are cared for, as well as the adverse health effects suffered by those diagnosed with COVID-19.**

OSHA has determined that an ETS is necessary to protect healthcare and healthcare support employees in covered healthcare settings from exposures to SARS.

## WHAT IS THE SCOPE OF THE PROBLEM IN HEALTHCARE?

As of May 24, 2021, **over 491,816 healthcare workers have contracted COVID-19, and more than 1,600 of those workers have died** (CDC, May 24, 2021).

Workers face a particularly elevated risk of exposure to SARS-CoV-2 in settings where patients with suspected or confirmed COVID-19 receive treatment or where patients with undiagnosed illnesses come for treatment (e.g., emergency rooms, urgent care centers), especially when providing care or services directly to those patients.

**Through its enforcement efforts to date, OSHA has encountered significant obstacles, revealing that existing standards, regulations, and the OSH Act’s General Duty Clause are inadequate to address the COVID-19 hazard for employees covered by this ETS. The agency has determined that a COVID-19 ETS is necessary to address these inadequacies.**

Additionally, as states and localities have taken increasingly more divergent approaches to COVID-19 workplace regulation — ranging from states with their own COVID-19 ETS’ to states with no workplace protections at all — **it became clear to the current administration that a Federal standard was needed to ensure sufficient protection for healthcare employees in all states.**

## HOW DO I COMPLY WITH THE ETS AND EVENTUAL FINAL STANDARD?

You may use much of the policies and procedures you have already created prior to the ETS.

Perform a cross reference to this list and adjust any parts that may need additional steps/actions and document and date those to your file.

## Compliance checklist

### During the period of the ETS, covered healthcare employers must develop and implement:

- ☑ **A written COVID-19** plan that defines who in your organization is covered under the program and their roles. This plan must describe how your organizations will **identify and control exposures to SARS-CoV-2 virus and help prevent** COVID-19 illnesses created in the workplace.
  - The plan needs to address the actions taken based on your **COVID-19 risk assessment** and reference your policies and procedures.

Include these additional requirements to **reduce transmission of SARS-CoV-2 virus and subsequent COVID-19** in workplaces:

- ☑ Conduct patient/resident and employee screening and implement CDC guidelines for the management of residents/patients.
  - Employers may limit quarantine of employees if it presents undue hardship on our ability to provide care and it is the last resort.
- ☑ **Report COVID-19 cases as follows:**
  - Employees must report COVID-19 signs and symptoms laid out immediately to their employer.
  - Employer must report all cases of COVID-19 within 24 hours, regardless of where it may have been contracted. Employers must notify anyone who was in close contact with that person and was not in a respirator.
  - 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. The notification must specify the date(s) the person with COVID-19 was in the workplace during the potential transmission period (different than CMS and CDC).
- ☑ **Follow Return to Work (RTW) guidelines** set out by the CDC.
  - Note: Employers are not required to remove any employee who would otherwise be required to be removed under paragraph (i)(4)(iii)(A) of this section if the employee does not experience the symptoms in paragraph (l)(2)(iii) or (l)(2)(iv) of this section and has been fully vaccinated.
  - If removed, employees can be required to work remotely if appropriate (then they have rules about that, including rules on pay and benefits).
- ☑ **Follow your standard and transmission-based precautions** — personal protective equipment (PPE), including face masks or respirators; controls for aerosol-generating procedures; physical distancing of at least 6 feet when feasible for non-vaccinated staff.
- ☑ **Maintain physical barriers** in areas where unvaccinated patrons may work directly with your teams. 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.

Note: 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. Note to paragraph (i): Physical barriers are not required in direct patient care areas or resident rooms.
- ☑ **Maintain COVID-19 cleaning and disinfection practices** per CDC and use EPA list N chemicals.

- ☑ **Enhance ventilation and maximize fresh air exchanges** where possible — employers who own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s) must ensure that: (i) The HVAC system(s) is used in accordance with the HVAC manufacturer’s instructions and the design specifications of the HVAC system(s); (ii) The amount of outside air circulated through its HVAC system(s) and the number of air changes per hour are maximized to the extent appropriate; (iii) All air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC system(s).

If MERV-13 or higher filters are not compatible with the HVAC system(s), employers must use filters with the highest compatible filtering efficiency for the HVAC system(s); All air filters are maintained and replaced as necessary to ensure the proper function and performance of the HVAC system(s); and (v) All intake ports that provide outside air to the HVAC system(s) are cleaned, maintained, and cleared of any debris that may affect the function and performance of the HVAC system(s).

- Example — Minimum Efficiency Reporting Value (MERV) scale indicates the filtering efficiency for capturing particles between 0.3 and 10 microns. MERV values range from 1 to 16 for most applications, with higher values indicating higher efficiency. Filters with MERV ratings of 13 or greater are at least 85% efficient at capturing particles similar in size to those carrying the virus that causes COVID-19.



- ☑ **Provide training**, in a language and at a literacy level the employee understands, on at least the following subjects:

- 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 infection, 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 personal protective equipment (PPE) worn to comply with the ETS, including when PPE is required, limitations of PPE for protection against COVID-19, how to properly put on, wear, and take off PPE, and how to properly care for, store, clean, maintain, and dispose of PPE.
- 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.
  - Requirements of the ETS, how the employee can obtain copies of the ETS, and any employer-specific policies and procedures developed under the ETS, including the employer’s written COVID-19 plan, if required.
- ☑ **Ensure an anti-retaliation policy protects any staff who express COVID-19 concerns.**
  - ☑ **Complete OSHA 300 log recordkeeping and reporting** for workplace exposures to COVID-19. Use the decision tree for recordkeeping and reporting
  - ☑ **Encourage vaccination** by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects.
  - ☑ **Encourage the use of respirators, where respirators are used in lieu of required face masks, by including a mini respiratory protection program that applies to such use.**

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*Please contact your Lockton Loss Control representative if you have questions or need further assistance.*

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## Tips

- Although the standard does not set a fixed schedule for periodic training, paragraph (n)(2) requires additional or repeated training when:
  - There are changes that affect the employee’s risk of contracting COVID-19 at work.
  - Policies or procedures are changed.
  - There is an indication that the employee has not retained the necessary understanding or skill. For example, if an employer observes an employee engaging in activities that contradict knowledge gained through training, it is a sign to the employer that the employee may require a reminder or periodic retraining on work practices.
- Employers may rely on training completed prior to the effective date of the ETS to the extent that it meets the relevant training requirements. Employers must review and evaluate prior training and determine whether it covers all of the training requirements. Employers must train employees on missing elements, including providing training on those elements in different languages, where necessary, and providing opportunities for interactive questions and answers.
- Paragraph (n)(4) requires employers to ensure training provides 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. A healthcare employer could utilize a virtual or online training but would need to ensure that training includes the ability to ask questions and receive answers promptly. When video or computer-based trainings are used, this may require the employer to make available a qualified trainer to address questions after the training, or to offer a telephone hotline where employees can ask questions.

## Exemptions

The standard exempts from coverage certain workplaces where all employees are fully vaccinated and individuals with possible COVID-19 are prohibited from entry; and it 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.