



# COVID-19 OSHA Emergency Temporary Standard for Health Care Workers



Employees who provide treatment to people with suspected or confirmed cases of COVID-19 are considered to be working in high hazard conditions. In response, the Occupational Safety and Health Administration (OSHA) recently updated its COVID-19 standard to help protect employees in the health care industry.

Is your workplace covered by the new OSHA standard? Are you in compliance?

## What's in the emergency temporary standard?

OSHA 1910 Subpart U, [COVID-19 Emergency Temporary Standard](#) (ETS), affects certain employees who provide health care services or support services. The main sections of the ETS are:

- § 1910.502, Healthcare, which provides the most guidance to employers regarding how to handle COVID-19 infections and prevention measures.

- § 1910.504, Mini Respiratory Protection Program, which provides guidance on masks and personal protective equipment (PPE) protocols.
- § 1910.505, Severability, which offers guidance on how the ETS can be interpreted in court.
- § 1910.509, Incorporation by Reference, which includes guidelines created by other agencies that OSHA has adopted.

## Businesses and employees that ETS covers

The ETS is intended to protect the highest-risk employees – those who provide health care services or support services where suspected or confirmed cases of COVID-19 could exist. This includes professional health care practitioners (e.g., doctors, nurses, emergency medical personnel and oral health professionals) and employees of health care service providers:

- Hospitals
- Nursing homes
- Assisted living facilities and long-term care providers
- Emergency medical response and patient transportation
- Home health care and hospice care
- Hospital ambulatory care facilities (outpatient medical services)
- Autopsy providers

Check out the OSHA flowchart [“Is your workplace covered by the COVID-19 Healthcare ETS?”](#) to see if your workplace is covered by the ETS.

## Some exemptions under the ETS

Fully vaccinated employees who are covered by the ETS are exempted from masking, distancing and barrier rules in certain situations. These include when they are in well-defined areas (e.g., break rooms, employee-only areas and controlled entry areas where COVID-19 screening procedures are in effect), and whenever there is no reasonable expectation that people with suspected or confirmed COVID-19 are present.

## Exceptions to coverage involving service locations and primary duties

Certain jobs requiring health care licensure (such as doctors, nurses, dentists or pharmacists) may carry additional exclusions based on where the licensed provider is administering health care services. Examples are:

- When some health care duties are performed inside traditional settings, like a hospital or doctor’s office, while others are conducted outside office settings, such as home health care services.

- Pharmacists operating within a hospital or doctor’s office are normally covered under ETS, while those operating within a retail chain store are not covered.

If you’re unsure about whether ETS applies to you, contact your [local OSHA regional office](#).

## Businesses and employees that ETS does not cover

According to OSHA, the ETS does not apply to:

- Settings where all non-employees are screened prior to entry.
- Settings where people with suspected or confirmed COVID-19 are not permitted to enter.
- Facilities that provide first aid or medical care that is not administered by a licensed health care provider.
- Facilities that dispense prescriptions, such as retail pharmacies.
- 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.
- Well-defined hospital ambulatory care settings where all employees are fully vaccinated, all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter.
- Home health care settings where all employees are fully vaccinated, 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 (*e.g.*, off-site laundry, off-site medical billing).
- Telehealth services performed outside of a setting where direct patient care occurs.
- Settings that house health care facilities but are not health care settings in and of themselves (*e.g.*, medical clinic in a manufacturing facility, walk-in clinic in a retail setting); the ETS applies only to the embedded health care setting and not the remainder of the physical location.
- Non-health-care settings where emergency responders or other licensed health care providers may enter to provide health care services; the ETS applies only to those providing the health care services.

## Exceptions based on the location of health care services provided

Certain job roles may require employees to travel between locations that fall under the covered and non-covered regulations of the ETS.

For example, a retail pharmacy is conjoined with a medical facility that provides health care services to the public. The retail pharmacy and the medical facility are separated by a door that allows patients and other members of the public

to freely travel between both areas. The medical facility screens patients prior to entry and limits the waiting area to patients who have appointments. One of the doctors leaves the waiting area and goes to the retail pharmacy to consult with a patient about their prescription. The individual doctor is covered by the provisions of the ETS, but not the retail pharmacy or its employees.

## Key takeaways regarding the ETS

Controlling COVID-19 requires employers to use multiple overlapping controls for a layered approach to protecting employees. The ETS outlines the following action items for covered businesses:

### 1. Develop and implement a COVID-19 plan for your business:

- Employers with 11 or more employees must have a written COVID-19 plan.
- Employers with 10 or fewer employees must have a COVID-19 plan, but it does not need to be written (i.e., it can be communicated to employees verbally).

### 2. The COVID-19 plan (written or verbal) must:

- Designate a safety coordinator with the authority to enforce compliance with the ETS.
- Include a hazard assessment that is specific to your business's operational hazard exposure (no cookie-cutter plans).
- Involve non-managerial employees in the workplace hazard assessment, and the development and implementation of the plan.
- Detail the policies and procedures in place to minimize the risk of COVID-19 transmission to employees.

### 3. Enact patient screening and management protocols that:

- Limit and monitor patients' points of entry to settings where direct patient care is provided.
- Screen and triage patients, clients, visitors and non-employees.
- Implement patient management strategies.

### 4. Develop and implement policies and procedures that:

- Follow the standard and transmission-based precautions based on [CDC guidelines that have been incorporated by reference](#) into the ETS.

### 5. Enact clear PPE protocols that:

- Comply with the [ETS Mini Respiratory Protection Program](#).
- Ensure every employee wears a face mask when indoors and whenever occupying a vehicle with other people for work purposes.
- Give employees who are allowed to provide their own PPE a specific notice regarding self-provided respirators, as provided below (see "[ETS Mini Respiratory Protection Program Fact Sheet](#)" for OSHA

requirements).

- Provide respirators and ensure employees use them, as well as other PPE, when exposed to people with suspected or confirmed COVID-19.
- Provide respirators and ensure employees use them, as well as other PPE, when performing aerosol-generating procedures on a person with suspected or confirmed COVID-19.

#### **6. When performing aerosol-generating procedures on a person with suspected or confirmed COVID-19:**

- Limit employees present to only those essential to performing the procedure.
- Perform procedures in an airborne infection isolation room, if available.
- Clean and disinfect surfaces and equipment after the procedure is completed.

OSHA considers aerosol-generating procedures to be open suctioning of airways; sputum induction; cardiopulmonary resuscitation; endotracheal intubation and extubation; non-invasive ventilation (*e.g.*, bilevel positive airway pressure or continuous positive airway pressure therapy); bronchoscopy; manual ventilation; medical/surgical/postmortem procedures using oscillating bone saws; dental procedures involving ultrasonic scalers; high-speed dental handpieces; using air/water syringes; air polishing; and air abrasion.

#### **7. Practice physical distancing:**

- Keep people at least 6 feet apart when indoors.

#### **8. Install solid physical barriers:**

- Barriers should be cleanable or disposable. In areas where patient care is not being administered and employees are not separated from other people by at least 6 feet, position the barriers at each fixed work location.

#### **9. Use cleaning and disinfection protocols that:**

- Follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with [CDC guidelines](#) in patient care areas and resident rooms, and for medical devices and equipment.
- Require high-touch surfaces and equipment to be cleaned at least once a day.
- Provide alcohol-based hand rub that is at least 60% alcohol and handwashing stations throughout the facility.

#### **10. Increase ventilation to ensure that:**

- Employer-owned or controlled heating, ventilation and air conditioning (HVAC) systems are used in accordance with the manufacturer's instructions and design specifications.
- Air filters are rated minimum efficiency reporting value 13 (MERV-13) or higher if the system allows it.

#### **11. Enact health screening and medical management protocols that:**

- Screen employees before each workday and shift.

- Require every employee to promptly notify their supervisor if they test positive for COVID-19, are suspected to have COVID-19 or are experiencing certain symptoms.
- Immediately remove any employee who tests positive for COVID-19 from the workplace. Do not allow them to reenter the workplace until [OSHA's return-to-work criteria are met](#).
- Notify certain employees within 24 hours when a person who has been in the workplace is COVID-19 positive.
- Follow the requirements outlined in OSHA's "[Paid Medical Removal of Employees and Return to Work](#)" flow chart.
- Provide paid medical removal protection benefits to employees who must isolate or quarantine, as required by [OSHA Standard 1910.502\(l\)\(5\)\(iii\) - \(iv\)](#) (applies to employers with 11 or more employees).

#### **12. Make a vaccination plan that:**

- Provides reasonable time and paid leave for vaccinations and vaccine side effects.

#### **13. Activate a training program that:**

- Ensures all employees receive training so they understand how COVID-19 is transmitted; recognize tasks and situations in the workplace that could result in infection; know how to use PPE; and are apprised of relevant policies and procedures.

#### **14. Uphold employees' rights and protections under the ETS:**

- Inform employees of their rights to the protections required by the ETS.
- Do not discharge or in any manner discriminate against employees for exercising their rights under the ETS or for engaging in actions required by the standard.

#### **15. Follow recordkeeping rules:**

- Establish and maintain a COVID-19 log of all employee instances of COVID-19, without regard to occupational exposure (applies to businesses with 11 or more employees).
- Make records available to employees and their representatives.

#### **16. Report work-related COVID-19 fatalities and hospitalizations to OSHA:**

- Within 8 hours of learning about a work-related COVID-19 fatality.
- Within 24 hours of learning about a work-related COVID-19 in-patient hospitalization.
- Use the [contact information](#) provided by OSHA.

## **A note on the ETS Mini Respiratory Protection Program**

The Mini Respiratory Protection Program only applies to circumstances specified under the ETS – generally, when employees are not exposed to suspected or confirmed cases of COVID-19 but where respirator use could provide enhanced protection, according to OSHA.

**The Mini Respiratory Protection Program does not replace OSHA Respiratory Protection Standard 1910.134.** OSHA Standard 1910.134 still applies to circumstances involving:

- Suspected or confirmed cases of COVID-19
- Other hazardous materials (e.g., silica, asbestos and airborne infectious agents such as mycobacterium tuberculosis)

***Employers who allow employees to provide their own respirators must provide them with a special notice***

***If employees covered under the ETS opt to purchase and use their own respirators, employers must provide them 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:***

- ***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 (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 in OSHA Section 1910.134. For more information about using a respirator, see [OSHA's respiratory protection webpage](#).***

## Reasonable accommodations and unvaccinated employees

Reasonable accommodations must be made for employees who aren't able to be vaccinated. These accommodations can include masking protocols, social distancing, telework and other measures. Consult with your lawyer to make sure you are following employment law guidelines.

**According to OSHA Standard 1910.502(a):**

**OSHA does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption in paragraphs (a)(2)(iv) and (a)(2)(v). 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 (e.g., telework, working in isolation), that employer may be within the scope of exemption in paragraphs (a)(2)(iv) and (a)(2)(v).**

**OSHA also offers some added guidance within Standard 1910.502:**

- **Note 1 to paragraph (a). Nothing in this section is intended to limit state or local government mandates or guidance (e.g., executive orders, health department orders) that go beyond the requirements of and are not inconsistent with this section.**
- **Note 2 to paragraph (a): Employers are encouraged to follow public health guidance from the Centers for Disease Control and Prevention (CDC) even when not required by this section.**

## Incorporation by reference and non-OSHA guidelines

The ETS includes [OSHA Standard 1910.509](#), Incorporation by Reference. An incorporation by reference means that OSHA has adopted guidelines passed by other government agencies like the CDC. These guidelines include information on viral transmission and infection control, recommended PPE and approved disinfectants. They are helpful reference materials, but they are also law and can be referenced by OSHA as part of an audit or violation notice.

## Tools you can use to create a COVID-19 plan

It's important to stay in compliance with ETS, but you don't need to re-create the wheel! Use these free tools provided by OSHA to get a head start on your COVID-19 plan:



OSHA tool and document link	How it can help with ETS compliance
<a href="#">COVID -19 Healthcare Worksite Checklist and Job Hazard Analysis</a>	<p>Includes a ready-made hazard analysis tool to help you identify risk exposures in your workplace.</p>
<a href="#">COVID-19 Plan Template</a>	<p>After you complete your job hazard analysis, customize this template to suit your written workplace COVID-19 plan.</p>
<a href="#">The COVID-19 Log</a>	<p>The ETS requires covered employers to keep a COVID-19 log if they had 11 or more employees on June 21, 2021.</p>
<a href="#">Reporting COVID-19 Fatalities and In-Patient Hospitalizations to OSHA</a>	<p>Includes information on how to determine whether a COVID-19 case is work-related and when to report it to OSHA.</p>
<a href="#">Employer Notification Tool</a>	<p>The ETS requires that employers notify their employees of certain COVID-19 exposure risks. Includes an email notification sample that employers can use to notify their employees about a potential COVID-19 exposure in the workplace.</p>
<a href="#">Communication and Coordination Between Employers</a>	<p>Includes information on how to communicate your COVID-19 plan when employees of different employers share the same physical location.</p>
<a href="#">ETS Guidance for Employees – Notification to Employer and Paid Medical Removal for COVID-19</a>	<p>Explains when an employee needs to notify their employer about COVID-19-related issues and when employers must notify their employees about exposures and removals.</p>
<a href="#">ETS Compliance Guidance for Employers – Paid Medical Removal of Employees and Return to Work</a>	<p>Explains the steps that employers must take when they're notified that an employee is COVID-19 positive; has been told by a licensed health care provider that they are suspected to have COVID-19; is experiencing certain COVID-19 symptoms; or has been in close contact with a COVID-19 positive person in the workplace.</p>
<a href="#">COVID-19 Emergency Temporary Standard (ETS) Healthcare 29 CFR 1910.502 Employee Training Presentation</a>	<p>OSHA employee training presentation template.</p>

COVID-19 Emergency  
Temporary Standard (ETS)  
Mini Respiratory Protection  
Program 29 CFR 1910.504  
Employee Training  
Presentation

OSHA employee training presentation template.

## A word about COVID-19 in non-health-care settings not covered by the ETS

Preventing the spread of COVID-19 in non-health-care settings is covered by the Occupational Safety and Health Act of 1970, General Duty Clause. Similar to ergonomics or workplace violence, COVID-19 doesn't have its own dedicated standard beyond the ETS. Even so, OSHA can (and will) cite violations using this catch-all standard.

Employers whose industries fall outside the definition of health care are still expected to provide a workplace that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." COVID-19 fits the definition.

## "I didn't know" is not a defense

Whether specifically covered under the ETS or outside the scope of health care (or somewhere in between), employers shouldn't rely on a defense that they didn't know. As the pandemic rages toward a two-year mark, new variants and infections continue to threaten health on a global scale. Employers are expected to understand the potential for harm, so it's best to stay ahead of the curve and include pandemic mitigation in your business's training and emergency action planning.

Training your employees, keeping detailed records, enacting protocols based on government agency standards, and following local mask mandates are examples of good faith efforts that can help in the case of an audit or lawsuit.

## Consult your lawyer

If you have questions, consult your lawyer about compliance with the ETS, and the federal and state laws that relate to your business classification, operations and employment laws.

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