# OSHA's COVID-19 Safety Standard
# Background and Key Provisions

## EXECUTIVE SUMMARY

On June 10, 2021, the Occupational Safety and Health Administration (OSHA) released a long-awaited Emergency Temporary Standard (ETS) for COVID-19 protection in health care workplaces. ANA and other nurse advocates have been supporting specific safety protections from COVID-19 since the start of the coronavirus pandemic. As OSHA notes in materials accompanying the ETS, nearly 492,000 health care personnel contracted COVID-19, and more than 1,600 died by the end of May 2021.[1] In issuing the ETS, a rare move on the part of OSHA, the agency recognizes that health care personnel continue to be at higher risk and exposure to COVID-19, including variants that may emerge.

A cornerstone of the ETS is the requirement for health care employers to develop and implement a safety plan to minimize COVID-19 risks to personnel. The ETS also specifies a number of concrete steps employers must take to reduce COVID-19 transmission. ***Top takeaways for nurses, whether on the frontline or leading nursing care, include:***

***OSHA requires health care employers to engage employees in development and implementation of their plan to identify and control COVID-19 hazards in the workplace***.

- This requirement presents an opportunity for nurses to propose meaningful safety improvements during the period of the emergency standard.
- This opportunity may also be viewed as an opportunity to advocate for permanent steps to protect nurses from infectious disease and develop preparedness for future pandemics.

***The ETS' concrete requirements provide OSHA inspectors a firm basis to investigate and cite specific safety violations during the period of the emergency standard.***

- The ETS also articulates whistleblower protections when employees raise safety concerns.
- It is critical for nurses and all health care personnel to understand how to report violations to OSHA, including retaliatory measures they experience.

**Workplace safety complaints can be filed online, in person, or by phoning**

**800-321-6742 (OSHA).**

**For more information, visit OSHA's website https://www.osha.gov/workers/file-complaint**

[1] 86 F.R. 32376, 32377. June 21, 2021. Citing Centers for Disease Control and Prevention. Cases and Deaths Among Healthcare Personnel. May 24, 2021. Accessible online at https://covid.cdc.gov/covid-data-tracker/#health-care-personnel.

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This Policy Brief discusses the ETS in the following sections:

1. Background
2. COVID-19 Prevention Plan
3. Personal Protective Equipment
4. Mini Respirator Protection Program
5. Medical Screening and Management
6. Vaccination
7. Additional Protections
8. Effective Dates
9. Applicability
10. Next Steps

## 1. Background

OSHA has statutory authority to cite employers for failure in the duty to provide safe working conditions. This is known as the "general duty clause." OSHA is further authorized to promulgate safety standards applicable in specified industries or circumstances, such as health care. OSHA may also exercise a rarely-used power to issue an ETS, without the usual notice and comment period needed for developing a standard, when the agency determines there is a "grave danger" from which personnel must be protected.[2]

In issuing the COVID-19 ETS,[3] OSHA cites COVID-19 as a grave danger for health care personnel, and further found that increasingly widespread vaccination in 2021 has not eliminated COVID-19 as a hazard for health care personnel.[4] In lengthy narrative published along with the ETS, OSHA also indicated that its general enforcement authority has not been sufficient to protect health care personnel, noting a high volume of complaints it has received from HCP during the coronavirus pandemic.[5] OSHA acknowledged numerous useful guidance products for HCP safety published by its federal partner, the Centers for Disease Control and Prevention (CDC). However, these "are not sufficiently effective at protecting these employees because such guidance is not enforceable and there is no penalty for noncompliance." A purpose of the ETS is to provide "a clear statement of what OSHA expects employers to do to protect workers, thus facilitating better compliance."

## 2. COVID-19 Prevention Plan (29 CFR 1910.502(c))

The ETS requires health care employers to "develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace," including policies and procedures to minimize COVID-19

[2] Congressional Research Service (CRS). Occupational Safety and Health Administration (OSHA): Emergency Temporary Standards (ETS) and COVID-19. March 2020.
[3] 29 CFR 1910 Subpart U.
[4] 86 F.R. 32376. June 21, 2021. Accessible online at https://www.govinfo.gov/content/pkg/FR-2021-06-21/pdf/2021-12428.pdf
[5] "As of May 23, 2021, OSHA and its State Plan partners have received more than 67,000 COVID-related complaints since March of 2020 (OSHA, May 23, 2021). OSHA has received more complaints about healthcare settings than any other industry."

transmission to employees. The plan must designate a safety coordinator. The ETS provides for non-managerial employees to be involved in hazard assessment, plan development, and plan implementation. In materials accompanying the ETS, OSHA notes:

> An employer can seek feedback from employees through a variety of means, including safety meetings, a safety committee, conversations between a supervisor and non-managerial employees, a process negotiated with the exclusive bargaining agent (if any), or any other similarly interactive process. Other tools that may be helpful for employers in soliciting feedback from employees may include employee surveys or a suggestion box. The method of soliciting employee input is flexible and may vary based on the employer and the workplace.[6]

### 3. Personal Protective Equipment (29 CFR 1910.502(f))

In setting out requirements for PPE, the ETS distinguishes employers' responsibilities for employees who have contact with COVID-19 patients, compared to those who have minimal contact and exposure to COVID-19 in the workplace. With some exceptions, facemasks are required as basic indoor protection for employees with minimal exposure to confirmed or suspected COVID-19 cases.[7] The ETS defines facemask as "a surgical, medical procedure, dental, or isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy." Facemasks may also be referred to as "medical procedure masks."[8] Cloth masks do not meet this requirement.[9]

Nurses and other employees who care directly for patients with confirmed or suspected COVID-19 must be protected by approved respirators, which include single-use N95 respirators, elastomeric respirators, and powered air-purifying respirators (PAPR).[10] The respirator requirement applies, regardless of the employee's vaccination status. The respirator must be provided and used according to existing standards for respiratory protection, such as requirements for fit testing and use training.[11] Employers must also provide gloves, gowns and eye protection.[12]

The ETS affords employers regulatory relief in the event of N95 supply shortages. If N95 respirators are in short supply, the ETS allows employers to follow CDC's optimization guidelines. These strategies include limited reuse or extended use of N95s. The ETS does not discuss how supply shortages are defined or determined. However, OSHA emphasizes that the Food and Drug Administration (FDA) and CDC "believe there is an increased supply of respirators to transition away from these strategies."[13] Further, the ETS states, "Where possible, employers are encouraged to select elastomeric respirators or PAPRs instead of filtering facepiece respirators to prevent shortages and supply chain disruption."[14]

### 4. Mini-Respirator Program (29 CFR § 1910.504)

As a separate part of the ETS, OSHA created a Mini Respiratory Protection Program. This set of provisions recognizes that health care personnel may wish to use a respirator instead of a facemask, in

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[6] OSHA Frequently Asked Question (FAQ). Accessible at https://www.osha.gov/coronavirus/ets/faqs
[7] 29 CFR 1910.502(f)(1); 86 F.R. 32376, 32622.
[8] 29 CFR 1910.502(b); 86 F.R. 32376, 32621.
[9] 86 F.R. 32376, 32433.
[10] 29 CFR 1910.502(b); 86 F.R. 32376, 32621.
[11] See 29 CFR 1910.134.
[12] [12] 29 CFR 1910.502(f)(2); 86 F.R. 32376, 32622-23.
[13] See 86 F.R. 32376, 32438
[14] 29 CFR 1910.502(f)(2), 86 F.R. 32376, 32623.

situations when a respirator is not required by the ETS. The respirator may be provided by the employer or the employee. In such cases, employers are required to ensure that respirator seal checks are performed, and proper training is provided on use of the respirator. Under the Mini Respiratory Protection Program, however, employers are exempt from other provisions that typically apply when respirators are required, such as medical evaluations and fit-testing.[15]

### 5. Medical Screening and Management (29 C.F.R. 1910.502(l))

The ETS requires employers to screen health care personnel daily for COVID-19. If a COVID-19 test is required, the employer must provide the test at no charge to the employee. Employers are further held to detailed requirements for managing employees with confirmed COVID-19, including provisions for contact tracing and notification of other employees, and criteria for removing employees with COVID-19 from the workplace.

In cases where the ETS requires the employer to remove health care personnel due to COVID-19, the employer is required to compensate that employee for regular pay and benefits for two weeks or more, depending upon the size of the employer. The employer may apply accrued sick leave benefits to offset these costs. The compensation requirements do not apply to employers with ten or fewer employees. [16]

### 6. Vaccination (29 C.F.R. 1910.502(m))

Under the ETS, employers are required to support employees to receive COVID-19 vaccinations, including "reasonable time and paid leave" (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination." The ETS does not define "reasonable time" that employers must provide for vaccination. However, in materials released with the ETS, OSHA clarifies that "if an employer makes available to its employees four hours of paid leave for each dose of the vaccine, as well as up to 16 additional hours of leave for any side effects of the dose(s) (or 8 hours per dose), the employer would be in compliance with this requirement."

### 7. Additional Protections

The ETS specifies a number of additional COVID-19 protections for health care personnel, including:

- Aerosol-generating procedures (29 CFR 1910.502(g);
- Physical distancing of six feet indoors (29 CFR 1910.502(h);
- Physical barriers to be used in non-patient areas when employees are not physically distancing (29 CFR 1910.502(i) ;
- Cleaning and disinfecting in accordance with CDC guidelines (29 CFR 1910.502(j); and
- Ventilation systems and air filtration standards (29 CFR 1910.502(k).

### 8. Effective Dates

The ETS was published in the Federal Register on June 21, 2021.[17] For most provisions, employers must comply within 14 days, but have 30 days to meet certain requirements, e.g., training and ventilation.[18]

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[15] OSHA. COVID-19 ETS Fact Sheet.

[16] For more detailed information about this requirement, see OSHA's FAQ resources at https://www.osha.gov/coronavirus/ets/faqs

[17] 86 F.R. 32376.

[18] OSHA. COVID-19 ETS Fact Sheet. Accessible at https://www.osha.gov/coronavirus/ets

OSHA has said it will "monitor trends as more of the population becomes vaccinated and the post-vaccine evidence base continues to grow. If and when OSHA finds a grave danger from the virus no longer exists for covered healthcare workplaces (or some portion thereof), or new information necessitates a change in measures necessary to address the grave danger, OSHA will update the rule as appropriate."[19]

### 9. Applicability

Subject to specified exceptions, the ETS applies wherever health care and supportive services are provided, e.g., hospitals, nursing facilities. Notable exceptions include:

- Ambulatory-care settings of hospitals that are well-defined, if all employees are fully vaccinated, and non-employees are screened and denied entry if they have confirmed or suspected COVID-19;
- Non-hospital ambulatory care settings, e.g., clinician offices, where non-employees are screened and denied entry if they have confirmed or suspected COVID-19; and
- Home health 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.[20]

Further, for fully vaccinated employees in well-defined areas where "there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present," certain requirements do not apply. Specifically, personal protective equipment (PPE), physical distancing, and physical barriers are not required for fully-vaccinated employees.[21]

### 10. Next Steps

ANA will continue to advocate for vigorous enforcement of COVID-19 safety standards. We will engage with OSHA on implementation and enforcement of the ETC, and advocate for permanent protections from infectious agents in health care delivery. Nurses must not be on the frontlines of failed preparedness in future pandemics.

**Resources**

- For more information about specific topics covered by the ETS, visit OSHA's COVID-10 Health Care ETS website https://www.osha.gov/coronavirus/ets
- For more information about ANA's advocacy for nurse safety on the job, contact lisa.stand@ana.org

[19] 86 F.R. 32376, 32377.
[20] 86 F.R. 32376.
[21] Ibid.