

From: NACHC's Regulatory Affairs Team

To: Health Centers

Date: August 19, 2021

Re: OSHA Emergency Temporary Standard FAQ

As of July 21, 2021, covered healthcare employers, including health centers, are required to comply with [Occupational Safety and Health Administration](#) (OSHA)'s Occupational Exposure to COVID-19: Emergency Temporary Standard (ETS). The ETS requires covered healthcare employers to implement a multi-layered approach to controlling exposure to COVID-19 in the workplace, including patient and employee screening and management, providing personal protective equipment (PPE), implementing physical distancing and barriers, and supporting vaccination by providing reasonable time and paid leave.

Below NACHC has responded to the "top ten" questions received from health centers with information on the requirements of the [ETS](#), OSHA's comments to the ETS in the [Federal Register](#), and OSHA's [Frequently Asked Questions \(FAQ\)](#) and other applicable resources. Each answer concludes with references to specific sections, pages and/or questions in these resources for those seeking additional information. Please also review NACHC's webinar [recording and slides](#) and [resource list](#).

1. Are Federally Qualified Health Centers exempt from the ETS?

The ETS applies to all settings where any employee provides healthcare services or healthcare support services, unless an exception applies. Exemptions can apply to the whole facility or to well-defined portions of the facility. There are several exceptions to the ETS, including one for non-hospital ambulatory care settings where all non-employees are (1) screened prior to entry and (2) people with suspected or confirmed COVID-19 are not permitted to enter those settings. OSHA provides the following guidance on this exception:

- The employer must screen each non-employee prior to entry, make a determination based on that screening whether the non-employee has suspected or confirmed COVID-19, and bar entry to that non-employee if it is determined that the non-employee has suspected or confirmed COVID-19.
- Non-employees to be screened include patients, their family members and others accompanying patients to their appointments, as well as delivery persons, vendors and contractors.
- Examples of persons with suspected COVID-19 are those who indicate (during a COVID-19 screening, for example) that they have symptoms of COVID-19, or who present at a healthcare facility to receive a COVID-19 test.
- OSHA does not distinguish between healthcare services provided outdoors from those same services provided indoors. If a health center performs COVID-19 testing and treatment outside (in a parking lot or tent, for example), the ETS applies to the healthcare services provided in the outdoor setting, unless an exemption applies.

For more information on the scope and application of the ETS, please see:

- [29 CFR § 1910.502\(a\)](#)
- [86 Fed. Reg. 32562 - 67](#)
- [OSHA's FAQ: 1 -3](#)

2. Does this standard still apply if employees are vaccinated?

The ETS exempts fully vaccinated employees from the ETS requirements for personal protective equipment (PPE), physical distancing, and physical barriers in **well-defined areas** where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present. The employer's COVID-19 plan must include policies and procedures to determine employees' vaccination status. The other requirements under the ETS still apply.

For more information on the exception for vaccinated employees in well-defined areas, see:

- [29 CFR § 1910.502\(a\)\(4\)](#)
- [86 Fed. Reg. 32566 - 67](#)
- [OSHA's FAQ: 4](#)

3. Are there specific requirements under the ETS for patient screening?

The ETS requires employers to limit and monitor points of entry in settings where direct patient care is provided and to screen and triage all patients entering the setting. At a minimum, the screening should include asking questions to determine whether the patient is COVID-19 positive or has symptoms of COVID-19. OSHA notes that employers may also include patient screening methods such as temperature checks, confirming compliance with face covering policies and/or assessing recent exposure to COVID-19. Employers may permit patients to enter momentarily for in-person screening by an employee who performs the screening while maintaining a distance of 6 feet. Employers must establish policies to triage any patient experiencing COVID-19 symptoms or illness.

For more information on the patient screening and monitoring requirements, please see:

- [29 CFR § 1910.502\(d\)](#)
- [86 Fed. Reg. 32571 -73](#)
- [OSHA's FAQ: 9 – 14](#)

4. May an employer choose to have employees self-monitor for symptoms?

The ETS requires employers to screen each employee before each workday and each shift. Employers can meet this requirement by: (1) having employees self-monitor before they report to work; (2) screening all employees in-person; or (3) implementing some combination of both methods.

For employee self-monitoring, OSHA suggests:

- Employers can assist employees by providing a short fact sheet to remind them of the symptoms of concern.
- Employers may post a sign stating that any employee entering the workplace certifies that they do not have symptoms of COVID-19. The sign reinforces the obligation of employees to self-screen before entering the workplace.

For in-person employee screening, OSHA suggests:

- Employers should conduct the screening before employees come into contact with others in the workplace, such as co-workers, patients, or visitors.
- Employers must protect employee privacy and ensure that findings are kept confidential as required under the American with Disabilities Act and in accordance with other applicable laws.
- Employers must ensure screeners and employees being screened meet the ETS requirements for PPE, physical distancing and physical barriers.

For more information on the employee health screening requirements, see:

- [29 CFR § 1910.502\(l\)\(1\)](#)
- [86 Fed. Reg. 32588 - 89](#)
- [OSHA's FAQ: 51-52](#)

5. Are employers required to provide paid time to employees for COVID-19 testing or vaccinations?

The ETS requires employers to provide employees with paid leave for COVID-19 testing as part of the requirements for employee health screening and for medical removal of employees from the workplace as follows:

- Health screening purposes: If an employer requires a COVID-19 test for health screening purposes, the employer must provide the test to each employee at no cost to the employee. The employer must pay the employee for all costs associated with the test, including the cost of the test itself, as well as any time spent getting the test, time spent waiting for test results before the employee is allowed to enter the workplace, and if the employee must travel to a location that is not at the workplace to be tested, the employer must pay the employee for the time spent traveling and for any travel costs.
- Medical removal from the workplace:
 - If an employer provides a COVID-19 PCR test to an employee who removed from the workplace because the employee was told by a licensed healthcare provider that they are suspected to have COVID-19; is experiencing recent loss of taste and/or smell with no other explanation; or is experiencing both fever and new unexplained cough associated with shortness of breath, the employer must provide the test at no cost to the employee. In this instance, the employee would receive medical removal protection benefits (benefits and pay), unless the employee refuses the test.

- In an employer provides a COVID-19 test to an employee who was removed from the workplace due to close contact with a COVID-19 positive person in the workplace, the employer must provide the test at no costs to the employee. In this instance, the employee would receive medical removal protection benefits (benefits and pay), unless the employee refuses the test.

For more information on the paid time for COVID-19 testing requirements, see:

- [29 CFR § 1910.502\(l\)\(1\)\(ii\) and 29 CFR § 1910.502\(4\)\(ii\)\(B\)](#)
- [86 Fed. Reg. 32589; 86 Fed. Reg. 32593 - 95](#)
- [OSHA's FAQ: 54, 65, 66](#)

The ETS requires employers to support COVID-19 vaccinations by providing employees with reasonable time and paid leave for vaccination and any side effects experienced following vaccination. OSHA provides the following guidance on this requirement:

- Reasonable time may include, but is not limited to, time spent during work hours related to the vaccination appointment(s), time spent at the vaccination site, and time spent traveling to and from the location for vaccination. Paid leave provided may include paid sick leave or administrative leave. The paid leave can be in the form of an employee's accrued sick leave, if available, or in additional paid leave provided by the employer for this purpose.
- Employers may set a cap on the amount of time and paid leave available to employees to receive each dose of the vaccine and to recover from any side effects, but the cap must be reasonable. Accordingly, the amount of reasonable time and paid leave that an employer must make available to employees may vary depending on the circumstances. Generally, OSHA presumes 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."

For more information on the vaccination requirements, see:

- [29 CFR § 1910.502\(m\)](#)
- [86 Fed. Reg. 32597 - 600](#)
- [OSHA's FAQ: 81](#)

6. If an employee is exposed to a COVID-19 positive person outside of the workplace but has not developed symptoms and is not suspected to be COVID-19 positive, is an employer required to remove the employee from the workplace and provide medical removal protection (MRP) benefits?

The ETS does not require an employer to remove an employee or provide MRP benefits based upon an employee's exposure to a COVID-19 positive person outside of the workplace. The employer is required to remove the employee only if the employee: (1) tests positive for COVID-19, (2) is told by a licensed healthcare provider that they are suspected to have COVID-19; (3) experiences recent loss of taste and/or smell with no other

explanation; or (4) experiences both fever and new unexplained cough associated with shortness of breath.

If an employee is in close contact in the workplace with a COVID-19 positive person, the employer is required to remove the employee and provide MRP benefits unless the employee: (1) does not experience either recent loss of taste and/or smell with no other explanation or both fever and new unexplained cough associated with shortness of breath; and (2) is either fully vaccinated against COVID-19 or had COVID-19 and recovered within the past 3 months.

For more information on the medical removal from the workplace and medical removal protection benefit requirements, see:

- [29 CFR § 1910.502\(l\)\(4\) and \(5\)](#)
- [86 Fed. Reg. 32593 - 97](#)
- [OSHA's FAQ: 63-77](#)

7. What types of respirators are acceptable when respirators are required under the ETS?

Under the ETS, respirators must either be certified by NIOSH under 42 CFR Part 84 or authorized under an Emergency Use Authorization (EUA) by the US Food and Drug Administration (FDA). Common types of respirators include filtering facepiece respirators, elastomeric respirators, and powered air-purifying respirators (PAPRs).

The ETS requires employers to provide respirators to all employees who are exposed to persons with suspected or confirmed COVID-19 and to comply with the Respiratory Protection standard (29 CFR § 1910.134). The ETS also permits an employer to provide a respirator to an employee instead of a facemask. When an employer provides such an upgrade, it must comply with the mini respiratory protection program (29 CFR § 1910.504(d)).

For more information on the personal protective equipment requirements, see:

- [29 CFR § 1910.502\(f\)](#)
- [86 Fed. Reg. 32573 - 77](#)
- [OSHA's FAQ: 15-21](#)

8. What must my health center do to meet the hazard assessment requirement under the ETS?

The ETS requires employers to conduct a workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19. OSHA provides the following guidance on the process:

- The hazard assessment process is intended to help employers identify and understand where COVID-19 hazards potentially exist and what controls must be implemented in their workplace in order to minimize the risk of transmission of COVID-19. As part of

the hazard assessment, employers must inspect the entire workplace to find existing and potential risks of employee exposure to COVID-19.

- Employers have flexibility to determine the best approach to accomplish the overall hazard assessment; however, the hazard assessment must include an evaluation of employees' potential workplace exposure to all people present at the workplace, including patients, coworkers, employees of other entities, members of the public, clients, independent contractors, visitors, and other non-employees. Places and times where people may congregate or come in contact with one another must be identified and addressed, regardless of whether employees are performing an assigned work task or not. Employers must also consider how employees and other persons enter, leave, and travel through the workplace.
- Employers must develop a reasonable plan to mitigate identified COVID-19 hazards.

For more information on the hazard assessment requirements, see:

- [29 CFR § 1910.502\(c\)\(4\)](#)
- [86 Fed. Reg. 32567 - 71](#)
- [OSHA's FAQ: 6 – 7](#)

9. How can an employer determine if their existing HVAC system is functioning as designed?

The ETS requires employers who own or control buildings or structures with existing HVAC systems to ensure that HVAC systems are used in accordance with the manufacturer's instructions and the design specifications of the HVAC systems. OSHA provides the following guidance:

- Because each building or structure and its existing HVAC system(s) will be different, employers may find it necessary to consult with an HVAC professional to ensure that HVAC systems are working as designed. HVAC professionals can determine the best way to maximize the system's ventilation and air filtration capabilities and thereby ensure the system is operating according to the HVAC system's design specifications.
- If consulting with an HVAC professional is not feasible, an inspection and maintenance program performed on a regularly scheduled basis can be used to demonstrate that an HVAC system is functioning as designed. Procedures and checklists for inspection and maintenance of an HVAC system have been developed by [ASHRAE](#), [EPA](#) and [AIHA](#).

For more information on the ventilation requirements, see:

- [29 CFR § 1910.502\(k\)](#)
- [86 Fed. Reg. 32586 - 88](#)
- [OSHA's FAQ: 43 - 48](#)

10. How will OSHA enforce the ETS?

The Occupational Safety and Health Act of 1970 gives employees and their representatives the right to file a complaint and request an OSHA inspection of their workplace if they believe there is a serious hazard or their employer is not following OSHA standards.

OSHA will issue a Notification of Citation to the employer, which identifies the particular violation, with classifications ranging from willful, serious, other-than-serious, etc. The Notification of Citation also provides a deadline by which the employer must remedy or abate the violation and provides an opportunity to contest the findings.

OSHA is willing to use its enforcement discretion in situations where an employer can show it has made good-faith efforts to comply with the requirements of the standard, but has been unable to do so.

For more information on enforcement, see:

- [OSHA's Inspection Procedures for the COVID-19 Emergency Temporary Standard](#)
- [OSHA Penalties](#)