



MNOSHA Instruction **CPL 2-2.90**

July 29, 2021

## **SUBJECT: Inspection Procedures for the COVID-19 Emergency Temporary Standard**

### **Purpose:**

This instruction provides guidelines and establishes uniform inspection and enforcement procedures for the COVID-19 Emergency Temporary Standard, 29 CFR § 1910.502, and 29 CFR § 1910.504.

### **Scope:**

This instruction applies Minnesota-OSHA-wide.

### **References:**

1. State Register, Volume 46 Number 3, 29 CFR §1910, *Emergency Temporary Standard for COVID-19; Final Rule*, July 19, 2021.
2. [Presidential Executive Order on Protecting Worker Health and Safety](#), January 21, 2021.
3. Federal Register, 86 FR at 32376, 29 CFR §1910, *Emergency Temporary Standard for COVID-19; Final Rule*, June 21, 2021.
4. Federal OSHA Direction, DIR 2021-02 (CPL 02), *Inspection Procedures for the COVID-19 Emergency Temporary Standard*, June 28, 2021.
5. MNOSHA Instruction, CPL 2-2.120, *Respiratory Protection Enforcement Procedures*, January 27, 2015.
6. MNOSHA Instruction, CPL 2-2.48, *Enforcement Policy and Procedures for Occupational Exposure to Tuberculosis*, February 14, 2020.
7. MNOSHA Instruction, CPL 02-0.135A, *“Recordkeeping Policies and Procedures,”* dated October 1, 2015.

8. MNOSHA Field Compliance Manual (FCM).
9. MNOSHA Field Safety and Health Manual (FSHM).
10. CDC, *Hospital Preparedness Checklist*, [www.cdc.gov/coronavirus/2019-ncov/hcp/hcp-hospital-checklist](http://www.cdc.gov/coronavirus/2019-ncov/hcp/hcp-hospital-checklist).
11. CDC, *Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings*, [www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations](http://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations).
12. CDC, *How to Wash Masks*, [www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wash-cloth-face-coverings](http://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wash-cloth-face-coverings).
13. CDC, *Cleaning and Disinfecting Your Facility*, [www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility](http://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility).
14. CDC, *Symptoms of COVID-19*, [www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms](http://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms).
15. CDC, *Healthcare Facilities: Managing Operations During the COVID-19 Pandemic*, [www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf](http://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf).
16. CDC, *Burn Rate Calculator*, [www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator](http://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator).
17. CDC, *NIOSH-Approved Particulate Filtering Facepiece Respirators*, [www.cdc.gov/niosh/npptl/topics/respirators/disp\\_part](http://www.cdc.gov/niosh/npptl/topics/respirators/disp_part).
18. CDC, *Counterfeit Respirators / Misrepresentation of NIOSH-Approval*, [www.cdc.gov/niosh/npptl/usernotices/counterfeitResp](http://www.cdc.gov/niosh/npptl/usernotices/counterfeitResp).
19. Food and Drug Administration (FDA), *Emergency Use Authorization (EA) for Respiratory Protection Equipment*, [www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#respirators](http://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#respirators).
20. FDA, *Umbrella EUA for Surgical Masks*, [www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#appendixasurgicalmasks](http://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#appendixasurgicalmasks).
21. FDA, *Face Masks, Including Surgical Masks, and Respirators for COVID-19*, [www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19](http://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19).

22. FDA, *Authorized Surgical Masks and Surgical Masks Removed from Appendix A*, [www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#appendixremoved](https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas#appendixremoved).

## Expiration:

This instruction is effective for no more than 12 months from the effective date of the *Emergency Temporary Standard for COVID-19; Final Rule*, July 19, 2021, unless canceled or extended by a superseding directive.

## Background:

The World Health Organization declared the COVID-19 pandemic on March 11, 2020. As the pandemic grew throughout the U.S., it impacted workplaces in virtually every industry and required employers, particularly those having workers in very high-hazard industries (e.g., healthcare and emergency response) and workplaces where employees work in very close contact to one another (e.g., meatpacking), to adopt certain practices to mitigate the hazard. Workers' occupational exposure to SARS-CoV-2 during the pandemic may vary from community to community, depending on local conditions or outbreaks.

Exposures may depend on a variety of factors including the physical environment of the workplace, the type of work activity, the health and vaccination status of the worker, the ability of workers to wear face coverings and abide by current CDC guidelines, and the need for close contact (within 6 feet for a cumulative total of 15 minutes or more over a 24-hour period) with any person, including those known to have or suspected of having COVID-19, and those who may be infected with—and able to spread—SARS-CoV-2 without knowing it. Other factors, such as employees' vaccination status, conditions in communities where employees live and work, their activities outside of work, and individual health conditions, may also affect workers' risk of getting COVID-19 and/or developing complications from the illness.

At the onset of the pandemic, MNOSHA in coordination with other public health agencies began developing recommendations to assist employers in preparing their workplaces to minimize transmission of the virus. Throughout the pandemic, MNOSHA prioritized COVID-19 related inspections involving deaths, hospitalizations and employee complaints due to occupational exposures to COVID-19. Under Minnesota Governor's Executive Order, businesses in operation were required to establish a written COVID-19 Preparedness Plan. In April 2020, MNOSHA began Interim Enforcement of employer's COVID-19 Preparedness Plans and mitigation efforts to prevent the of transmission of COVID-19 in the workplace.

In addition, per the Presidential Executive Order on Protecting Worker Health and Safety, January 21, 2021 OSHA adopted an Emergency Temporary Standard for COVID-19. OSHA considered and determined that additional measures could be taken to protect workers and that it was appropriate to issue an ETS for COVID-19 in healthcare to set specific requirements beyond the general duty clause. An emergency temporary standard to prevent workplace exposures to SARS-CoV-2, the virus that causes COVID-19 disease was issued on June, 21, 2021. MNOSHA adopted the emergency temporary standard *for COVID-19* on July 19, 2021. This directive

provides instruction and guidance to Occupational safety and health investigators (OSHIs) for enforcing the COVID-19 Emergency Temporary Standard.

## **ACTION:**

### **I. Inspection Procedures**

#### **A. Scope and Application**

The emergency temporary standard establishes new requirements to protect healthcare or healthcare support workers across the nation from COVID-19.

With some exceptions, the Healthcare COVID-19 ETS, 29 CFR § 1910.502, applies to all settings where any employee provides healthcare services or healthcare support services.

29 CFR § 1910.502 does not apply to the following tasks:

1. The provision of first aid by an employee who is not a licensed healthcare provider;
2. The dispensing of prescriptions by pharmacists in retail settings;
3. 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;
4. 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;
5. Home healthcare 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;
6. Healthcare support services not performed in a healthcare setting where direct patient care occurs (e.g., off-site laundry, off-site medical billing); or
7. Telehealth services performed outside of a setting where direct patient care occurs.

The applicability of 29 CFR § 1910.502 is also limited in the following situations:

1. Where a healthcare setting is embedded within a non-healthcare setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), this section applies only to the embedded healthcare setting and not to the remainder of the physical location.
2. Where emergency responders or other licensed health care providers enter a non-healthcare setting

to provide health care services, this section applies only to the provision of the healthcare services by that employee. For example, if an unvaccinated nurse provides in-home healthcare while a cleaning person happens to be working separately in the house, the ETS applies to the nurse's employer but would not apply to the employer of the cleaning person.

3. In well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, paragraphs (f), (h), and (i) of this section do not apply to employees who are fully vaccinated.

Notes to paragraphs (a)(2)(iv) and (a)(2)(v):

1. MNOSHA does not intend to preclude employers of employees who are unable to be vaccinated from the scope exemption in paragraphs (a)(2)(iv) and (a)(2)(v). Under 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 exemption in paragraphs (a)(2)(iv) and (a)(2)(v).
2. Nothing in these sections are intended to limit state or local government mandates or guidance (e.g., executive order, health department order) that go beyond the requirements of and are not inconsistent with these sections.
3. Employers are encouraged to follow public health guidance from the Centers for Disease Control and Prevention (CDC) even when not required by this section. See <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
4. 29 CFR §§ 1910.502(l)(5)(iii) – (l)(5)(iv) and (q)(2)-(q)(3) do not apply where the employer has 10 or fewer employees.

The size of the employer is based on the total number of employees for the company nationwide and not per establishment. All individuals who are "employees" under the OSH Act are counted in the total; the count includes all full-time, part-time, temporary, and seasonal employees. For businesses that are sole proprietorships or partnerships, the owners and partners would not be considered employees and would not be counted. Other individuals who are not considered to be employees under the OSH Act are uncompensated volunteers.

5. The Mini Respiratory Protection Program, 29 CFR § 1910.504, applies only to respirator use in accordance with § 1910.502(f)(4)(i) and (ii). See corresponding sections in this Direction.
6. The COVID-19 ETS includes provisions to ensure employees are aware of their rights under the

standard, and that they are protected from retaliation for exercising those rights.

## **B. Definitions**

Some terms used in the preamble and regulatory text of the respective standard are presented below.

1. **Aerosol-generating procedure** means a medical procedure that generates aerosols that can be infectious and are of respirable size. For the purposes of this section, only the following medical procedures are considered aerosol-generating procedures: open suctioning of airways; sputum induction; cardiopulmonary resuscitation; endotracheal intubation and extubation; non-invasive ventilation (e.g., BiPAP, CPAP); bronchoscopy; manual ventilation; and medical/surgical/postmortem procedures using oscillating bone saws; and dental procedures involving: ultrasonic scalers; high-speed dental hand-pieces; air/water syringes; air polishing; and air abrasion.
2. **Airborne infection isolation room (AIIR)** means a dedicated negative pressure patient-care room, with special air handling capability, which is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent or other enclosure designed to operate under negative pressure).
3. **Ambulatory care** means healthcare services performed on an outpatient basis, without admission to a hospital or other facility. It is provided in settings such as: offices of physicians and other health care professionals; hospital outpatient departments; ambulatory surgical centers; specialty clinics or centers (e.g., dialysis, infusion, medical imaging); and urgent care clinics. Ambulatory care does not include home healthcare settings for the purposes of this section.
4. **Clean/cleaning** means the removal of dirt and impurities, including germs, from surfaces using soap and water or other cleaning agents. Cleaning reduces germs on surfaces by removing contaminants and may also weaken or damage some of the virus particles, which decreases risk of infection from surfaces.
5. **Close contact** means being within 6 feet of any other person for a cumulative total of 15 minutes or more over a 24-hour period during that person's potential period of transmission. The potential transmission period starts 2 days before the person feels sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated.
6. **Common areas** mean indoor or outdoor locations under the control of the employer that more than one person may use or where people congregate (e.g., building lobbies, reception areas, waiting rooms, restrooms, break rooms, eating areas, conference rooms).
7. **COVID-19 (Coronavirus Disease 2019)** means the respiratory disease caused by SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2). For clarity and ease of reference, this section refers to "COVID-19" when describing exposures or potential exposures to SARS-CoV-2.
8. **COVID-19 positive** and **confirmed COVID-19** refer to a person who has a confirmed positive test for,

or who has been diagnosed by a licensed healthcare provider with, COVID-19.

9. **COVID-19 symptoms** mean the following: fever or chills; cough; shortness of breath or difficulty breathing; fatigue; muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.
10. **COVID-19 test** means a test for SARS-CoV-2 that is cleared or approved by the U.S. Food and Drug Administration (FDA) or is authorized by Emergency Use Authorization (EUA) or Notification from the FDA to diagnose current infection with the SARS-CoV-2 virus; and administered in accordance with the FDA clearance or approval or the FDA EUA as applicable.
11. **Direct patient care** means hands on, face-to-face contact with patients for the purpose of diagnosis, treatment, and monitoring.
12. **Disinfect/disinfection** means using an EPA-registered disinfectant on EPA's "List N," (incorporated by reference, 29 CFR § 1910.509), in accordance with manufacturers' instructions to kill germs on surfaces.
13. **Facemask** means a surgical, medical procedure, dental, or isolation mask that is FDA cleared, authorized by an FDA EUA, or otherwise offered or distributed as described in an FDA enforcement policy. Facemasks may also be referred to as "medical procedure masks."
14. **Fully vaccinated** means 2 weeks or more following the final dose of a COVID-19 vaccine.
15. **Hand hygiene** means the cleaning and/or disinfecting of one's hands by using standard handwashing methods with soap and running water or an alcohol-based hand rub that is at least 60% alcohol.
16. **Healthcare services** mean services that are provided to individuals by professional healthcare practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. Healthcare services are delivered through various means including: hospitalization, long-term care, ambulatory care (e.g., treatment in physicians' offices, dentists' offices, medical clinics), home health and hospice care, emergency medical response, and patient transport. For the purposes of this section, healthcare services include autopsies.
17. **Healthcare support services** mean services that facilitate the provision of healthcare services. Healthcare support services include patient intake/admittance, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.
18. **High-touch surfaces and equipment** means any surface or piece of equipment that is repeatedly touched by more than one person (e.g., doorknobs, light switches, countertops, handles, desks, tables, phones, keyboards, tools, toilets, faucets, sinks, credit card terminals, touch-screen enabled

devices).

19. **Physical location** means a site (including outdoor and indoor areas, a structure, or a group of structures) or an area within a site where work or any work-related activity (e.g., taking breaks, going to the restroom, eating, entering, or exiting work) occurs. A physical location includes the entirety of any space associated with the site (e.g., workstations, hallways, stairwells, breakrooms, bathrooms, elevators) and any other space that an employee might occupy in arriving, working, or leaving.
20. **Respirator** means a type of personal protective equipment that is certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR part 84 or is authorized under an Emergency Use Authorization (EUA) by the FDA. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators, elastomeric respirators, and powered air-purifying respirators (PAPRs). Face coverings, facemasks, and face shields are not respirators.
21. **Screen** means asking questions to determine whether a person is COVID-19 positive or has symptoms of COVID-19.
22. **Surgical mask** means a mask that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials. The mask meets certain fluid barrier protection standards and Class I or Class II flammability tests. Surgical masks are generally regulated by FDA as Class II devices under 21 CFR § 878.4040 – Surgical apparel.
23. **Vaccine** means a biological product authorized or licensed by the FDA to prevent or provide protection against COVID-19, whether the substance is administered through a single dose, or a series of doses.

### ***C. General Inspection Procedures***

1. Inspection procedures in the FCM shall be followed, except as modified in this directive. OSHIs should also consult the MNOSHA FSHM.
2. **Inspection Scheduling.** In most cases, the highest priority will be given to fatality inspections and then to other unprogrammed inspections (i.e., complaints and referrals) alleging employee exposure to COVID-19 related hazards. In coordination with ADM 2.1, Scheduling Plan for Programmed Inspections, Healthcare emphasis inspections will also be conducted and follow the instruction in this directive.
3. **Opening Conference.** OSHIs shall request to speak to the employer's representative or safety director, COVID-19 safety coordinator(s), infection control director, and other persons responsible for implementing COVID-19 protections or occupational health hazard control. Other individuals responsible for providing records pertinent to the inspection should also be included in the opening



conference or interviewed early in the inspection (*e.g.*, facility administrator, training director, facilities engineer, director of nursing, human resources). Also, employee representatives, *e.g.*, union officials, may participate in the opening conference and may accompany OSHIs during the inspection.

4. **OSHI Safety.** Inspections must be conducted in a manner to assure the safety of OSHIs and all personnel they come in close contact with. OSHIs must observe all appropriate precautions for physical distancing, PPE use, and hygiene. When on site, OSHIs must take all necessary precautions, such as requesting to conduct opening conferences in a designated, uncontaminated administrative area, while wearing any necessary PPE (as detailed in the FSHM).
5. OSHIs shall determine whether work practices conducted at the facility or worksite are exempted under the standard.
  - a. OSHIs should determine if any of the exemptions outlined in sections 29 CFR § 1910.502(a) apply to the whole facility or to well-defined portions thereof. A well-defined portion of the facility could be an entire department (*e.g.*, patient care operations) or a section of a building (*e.g.*, room, floor, wing). An employer whose workforce is fully vaccinated with no reasonable expectation that any person with suspected or confirmed COVID-19 will be permitted entry does not have to comply with paragraphs (f), (h) and (i) of this section. OSHIs may verify the employer's assertions by interviewing employee(s) at the site regarding their vaccination status. OSHIs may also request documentation that further supports the employees' vaccination status if available. A previously exempt area would have to be re-evaluated upon hiring of new, unvaccinated employees.

NOTE: Where employees cannot be vaccinated because of medical conditions or certain religious beliefs, the employer may be (partially) exempt from the requirements of the standard by providing reasonable accommodations. The reasonable accommodation must be accomplished in such a manner that does not expose unvaccinated employees to COVID-19 hazards: *e.g.*, through telework, solitary work, or implementation of controls only in an area exclusively dedicated to unvaccinated employees.

- b. OSHIs should request the establishment's Injury and Illness Logs (OSHA 300, 301 and OSHA 300A) for calendar years 2020 and 2021 to identify work-related cases of COVID-19. Document whether any such cases were entered on the log. OSHIs may inquire whether employees are aware of any recent COVID-19 cases among employees or among patients/residents.
  - c. If OSHIs are able to verify that the employer is exempt from the standard based on any of the provisions in section 29 CFR § 1910.502(a)(2); (a)(3) and (a)(4), **and** where there is an absence of recent or active work-related COVID-19 infections, OSHIs should document their findings, and proceed with the inspection in order to address any additional hazards alleged or those covered under the Healthcare emphasis program.

NOTE: The exemptions and limited exceptions outlined in the ETS section (a), Scope and Application, do not apply if the establishment is not fully compliant with the terms of the

particular exemption or exception (*e.g.*, a non-hospital ambulatory care setting that screens but permits entry to suspected or confirmed COVID-19 visitors, patients, or residents is covered by the ETS.)

6. **Program and Document Review.** All COVID-19-related inspections should include a review of the employer's COVID-19 plan and related documents, and interviews with employers and employees. OSHIs should make the following assessments:
- a. Determine whether the employer has a written COVID-19 plan (or elements thereof) which may be part of a safety and health plan that includes contingency planning for emergencies and natural disasters. For example, in healthcare, the employer should already have a pandemic plan, as recommended by the CDC.<sup>1</sup> If the COVID-19 plan is a part of another emergency preparedness plan, a limited review of sections related to SARS-CoV-2 exposure would be adequate.
  - b. Review evidence or documentation that a hazard assessment was conducted.
  - c. Determine whether the employer has established administrative and engineering control measures to facilitate physical distancing (*e.g.*, barriers or administrative measures to encourage 6-foot distancing).
  - d. Review information such as medical records related to worker exposure incident(s), OSHA-required recordkeeping, and any other pertinent information or documentation deemed appropriate by the OSHI. This includes gathering documentation on COVID-19-related fatalities, employees who have contracted COVID-19, have been hospitalized, or have been placed on precautionary removal/isolation as a result of work-related exposure to SARS-CoV-2.
  - e. Review the respiratory protection program and any modified respirator policies related to COVID-19 (*e.g.*, policies modified to accommodate use of respirators authorized by an Emergency Use Authorization (EUA) from the U.S. Food and Drug Administration (FDA) for healthcare employers) and assess compliance with 29 CFR § 1910.504 and 29 CFR § 1910.134 where applicable.
  - f. Review employee training records, including any records of training related to SARS-CoV-2 exposure prevention or in preparation for a pandemic, if available.
  - g. Review documentation of provisions made by the employer to obtain and provide appropriate and adequate supplies of PPE.

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<sup>1</sup> For hospitals, see [www.cdc.gov/coronavirus/2019-ncov/hcp/hcp-hospital-checklist](https://www.cdc.gov/coronavirus/2019-ncov/hcp/hcp-hospital-checklist).

- h. Review documentation of maintenance and use of engineering controls such as HVAC systems, portable HEPA filtration units, and AIIRs according to manufacturers' instructions, where appropriate.
- i. Where appropriate, determine if the facility has airborne infection isolation rooms/areas (AIIRs), and gather information about the employer's use of air pressure monitoring systems and any periodic testing procedures.
- j. Review any procedures for assigning patients to AIIRs and procedures used to limit AIIR access to employees who are trained and adequately outfitted with PPE. See also [section L](#) of this directive on ventilation requirements.
- k. Review procedures in place for transferring patients to other facilities in healthcare settings where appropriate AIIRs are unavailable or inoperable. Also, where appropriate, review procedures for accepting COVID-19 patients transferring from other facilities.
- l. Establish the numbers and placements, *i.e.*, room assignments or designated area (cohorting) assignments, of confirmed and suspected COVID-19 patients under isolation at the time of inspection.
- m. Establish the pattern of placements for confirmed and suspected COVID-19 patients.

#### **7. Walkaround.**

OSHS should determine what areas of a facility will be inspected (*e.g.*, emergency rooms, hospital morgue, respiratory therapy areas, bronchoscopy suites, locker rooms, break rooms, time clocks).

OSHS should not enter occupied patient rooms or treatment areas during high-hazard procedures. OSHs should evaluate the need to enter an occupied patient room and discuss with a supervisor. Photographs or videotaping where practical should be used for case documentation, such as recording smoke-tube testing of air flows inside or outside AIIR. However, *under no circumstances shall OSHs photograph or take video of patients*, and OSHs must take all necessary precautions to assure and protect patient confidentiality. Throughout their engagement with facilities treating a significant number of COVID-19 patients, OSHs shall avoid interference with any ongoing medical services.

#### **D. COVID-19 Plan**

29 CFR § 1910.502(c) establishes the requirements for a COVID-19 plan. Where there are more than 10 employees, the plan must be in writing. These requirements are applicable to all covered entities.

##### **1. Inspection Guidance.**

- a. **Written COVID-19 Plan:** OSHs must request and review the employer's written COVID-19 plan to ensure that it includes each of the required elements in paragraphs (c) 1-7. If the employer has multiple facilities that are substantially similar, its COVID-19 plan may be developed by

- facility type rather than by individual workplace so long as all required site-specific information is included in the plan. Employers may also develop a single comprehensive plan in instances where employees are performing the same task(s) at multiple but different facilities as long as any required site-specific information is included.
- b. In order for an employer to be exempt from providing controls (*e.g.*, face coverings, physical distancing, physical barriers, ventilation, cleaning and disinfecting) in a well-defined area of the workplace on the basis that employees are fully vaccinated, the employer must have policies and procedures in the COVID-19 plan that were used to determine employees' vaccination status. These policies and procedures may exist independently of any formal written COVID-19 response; may be part of an HR (Human Resources) portfolio; and may be accomplished in multiple ways, including, but not limited to, a verbal instruction to employees; a staff meeting discussing vaccination; a written staff memo or a formal change to conditions of employment. OSHIs should verify the existence and effectiveness of these procedures for determining vaccination status by reviewing relevant proof or records, if available, or through interviews of employer and employees' representatives.
  - c. If it is not possible to physically define or delineate a dedicated area where all employees are vaccinated, then the employer is required to implement all elements of the COVID-19 plan. See *29 CFR §\_1910.502(a)* for further information on verification of exemptions.
  - d. Employers have latitude in how it assures vaccination status. Employers may choose to verbally ask the employee and document the status, may keep photocopies of the vaccination card or may request that the employee provide other evidence of vaccination such as a letter from a physician or vaccination provider (*e.g.*, retail pharmacy).
  - e. OSHIs should interview a sufficient number of affected employees on multiple shifts (where applicable) as part of the overall assessment of the employer's COVID-19 plan and, in cases where an employer makes an exemption claim, to verify the vaccination status of the affected workforce. As defined in the standard, "*Fully vaccinated*" means 2 weeks or more following the final dose of a COVID-19 vaccine. OSHIs should inquire about each element of the program and document the employee's answers relative to the extent to which the employer's COVID-19 plan follows the prescribed guidelines.
  - f. **COVID-19 Safety Coordinator(s):** OSHIs should inquire if employers designated one or more COVID-19 safety coordinators to implement, monitor, and report on the COVID-19 plan developed under this section. OSHIs should review the written COVID-19 plan (where required) to ensure that the safety coordinator(s) is identified in writing and has the authority to ensure compliance with all aspects of the COVID-19 plan including to implement and update the plan as needed. The OSHI should interview the COVID-19 safety coordinator(s) regarding their professional knowledge and background in infection control principles and practices as they apply to the workplace and employee job operations, and to ensure they are qualified through training, education, work experience or a combination thereof. Management of the COVID-19 plan may be performed by a team of infection control personnel.

- g. **Employee input:** OSHIs should determine through interviews if non-managerial employees and their representatives if any, had input into the hazard assessment and plan's development, whether the plan was provided to employees for input and whether a mechanism for feedback and continuous improvement exists.
- h. OSHIs must make a determination whether the COVID-19 plan contains adequate workplace-specific policies and procedures to address potential workplace hazards related to COVID-19 at the worksite being inspected.
- i. **Monitoring and updating:** OSHIs should establish, through employee interviews, the means by which the employer ensures the continued effectiveness of its plan, and how quickly corrective actions are taken if/when necessary. The standard does not define the frequency with which to update the COVID-19 plan. However, the workplace must be monitored and, as needed, updates must be made to ensure continued effectiveness of the COVID-19 plan. At a minimum, updates may be necessary when changes in tasks or processes create new or previously unidentified exposures or the vaccination status (including any possible booster shots recommended by the CDC) of the affected workforce changes. Through interviews, document review, and walkaround observations, OSHIs should determine whether there are any unaddressed hazards not covered in the COVID-19 plan. OSHIs should discuss observed deficiencies in the plan with the employer's designated COVID-19 safety coordinator(s) to determine what previous efforts, if any, may have been made to evaluate the plan and update it.
- j. **Workplace Specific Hazard Assessment:** A workplace-specific hazard assessment must be conducted. This requirement extends to the employer's own employees and to employees of other employers when multiple employers share the same physical location. Employers should follow basic and well-known hazard assessment techniques including:
- **Identify potential risks and sources of exposure,** identify worker categories or job tasks with exposure, and classify the risk of worker exposure.
  - OSHIs should determine whether all reasonably anticipated workplace hazards related to COVID-19 have been identified. Exposure risk depends in part on the physical environment of the workplace, the type of work activity, the health status of the worker, the ability of workers to wear facemasks and abide by CDC guidelines, and the need for close contact (within 6 feet for a total of 15 minutes or more over a 24-hour period) with other people, including those known to have or suspected of having COVID-19, and those who may be infected with—and able to spread—SARS-CoV-2 without knowing it.
  - The hazard assessment and classification of risk should include all of the employees' duties in the workplace, such as: patient-facing tasks; the need to share tools or medical equipment (e.g., radios or computer terminal); and sharing common areas. In healthcare, risks are typically associated with direct patient care including but not limited to patient screening (e.g., at the hospital or clinic entrance); patient medical care (e.g., in the dedicated COVID-19 ward); the type of care (e.g., assistance with feeding or bathing) or the type of medical procedures to be performed (e.g., intubation, bronchoscopy); etc. See also

[www.osha.gov/coronavirus/hazards](http://www.osha.gov/coronavirus/hazards).

- k. **Minimizing Risks:** 29 CFR § 1910.502 requires employers to establish policies and procedures to minimize the risk of transmission of COVID-19 for each employee through a multi-layered approach of engineering and administrative controls as discussed in paragraphs (d) through (n) of the 29 CFR § 1910.502 standard, except where this section does not apply under paragraphs (a)(2)-(a)(4) of the standard. The plan does not need to address each employee individually; it may address employees generally.
- OSHIs should determine whether employers rely on use of face masks by affected employees as the only protective measure in effect or if employees are protected from exposure to COVID-19 in the workplace through additional engineering control measures including physical distancing and physical barriers.
- l. **Communication with other employers:** OSHIs should determine whether the COVID-19 plan includes policies and procedures on how to effectively communicate and coordinate with other on-site employers or contractors. This requirement may be accomplished through a combination of formal or informal procedures. For example, employers may use pre-planned meetings with document exchanges; a joint agreement to a common set of rules and work practices; contractual obligations; coordination of schedules / tasks to minimize personnel overlap and maximize physical distancing; erecting permanent or temporary barriers to restrict access, etc. The plan must also cover the mechanism for notifications between employers on multi-employer sites whenever any employees of any employer are exposed to conditions that do not meet the requirements of the standard.
- OSHIs should determine whether the COVID-19 plan addresses the protection of non-vaccinated employees who, in the course of their employment (e.g., home health), enter into private residences or other physical locations controlled by a person not covered by the OSH Act (e.g., homeowners, sole proprietors). OSHIs should assess whether such employees have been trained to recognize hazards and possible mitigation solutions (e.g., requesting the homeowner to maintain a 6-foot distance; re-positioning a chair to create additional distance; requesting that doors be left open to minimize touching knobs; request opening of windows to increase ventilation). OSHIs should also determine if employees have been encouraged to discuss deficiencies with their supervisors and seek mitigating solutions. In circumstances where COVID-19 protections are insufficient or lacking, the affected employee(s) must be given the opportunity to withdraw from that location, without fear of retaliation.

## 2. Citation Guidance.

- a. If the employer has not developed and/or implemented a COVID-19 plan for each work site in its jurisdiction, OSHIs should issue a citation for 1910.502(c)(1). If a facility is lacking a COVID-19 plan and other requirements of the standard have not been implemented, those paragraphs should be cited as separate violations in addition to paragraph (c).

- b. If a written COVID-19 plan is required, OSHIs may consider a citation for 1910.502(c)(1), where no plan exists. If no written plan is in place, a citation for 1910.502(c)(2) may also be proposed. These standards should normally be classified as serious.
- c. If the employer has more than 10 employees, and if no written COVID-19 plan exists, but all other provisions of the standard have been met, and it is unlikely that the deficiency would result in a serious hazard, the OSHI may consider the lack of the written program to be non-serious.
- d. If the employer developed and implemented a site-specific (or task-specific) COVID-19 plan but the written plan failed to address one or more of the elements under 1910.502(c)(3) - (c)(7), respectively, the OSHI may consider issuing citations for the specific provisions as appropriate.
- e. If the employer has failed to make the COVID-19 plan either site-specific (or task-specific), the OSHI may consider a citation for 1910.502(c)(1).
- f. If the employer has not designated a COVID-19 safety coordinator in its plan, the OSHI may consider a citation for 1910.502(c)(1). If deficiencies in COVID-19 safety coordinator(s)' knowledge and expertise in infection control practices principles are established, but all other provisions of the standard have been met, and it is unlikely that this deficiency would result in a failure to follow proper practices, the OSHI should generally not issue any citations.
- g. Violations for deficiencies or omissions in the workplace-specific hazard assessment which fail to identify workplace hazards, exposures, job tasks or worker categories may be considered for issuance of citations under 1910.502(c)(4)(i). For failure to include policies and procedures to determine employee vaccination status in the COVID-19 plan, OSHIs may consider citations for 1910.502(c)(4)(ii).
- h. If an employer claims exemption from the standard based on workforce vaccination status and if during the course of the inspection OSHIs document the presence of unvaccinated employees, OSHIs should consider issuing citations for all deficiencies found, including the COVID-19 plan and applicable (feasible) controls.
- i. If policies and procedures are included in the written plan but not implemented, then the specific requirement that has not been implemented should be cited, per 1910.502(d)-(n).

### ***E. Patient/Non-employee Screening and Management***

29 CFR § 1910.502(d) requires patient screening and management where direct patient care (as defined in the standard) is provided. Employers must limit the number of entrances to the facility, screen patients, residents and non-employees for symptoms of COVID-19 and follow CDC's COVID-19 Infection Prevention and Control Recommendations. These screening and management procedures must be included in the COVID-19 plan.

#### **1. Inspection Guidance.**

- a. This paragraph is in addition to health screening for employees required under paragraph 29

- CFR § 1910.502(1)(1). Note: This section does not apply to licensed health care providers and emergency responders entering a non-healthcare setting or private residence to provide healthcare services.
- b. OSHIs should review a copy of the facility's COVID-19 plan to ensure screening and management procedures are included.
  - c. OSHI should document procedures used to limit and monitor major points of entry (e.g., the main entrance(s) to the building, the emergency department, the entrance to receptionist, appointment desk, registration, or check-in, connecting entrances from the parking garage, receiving areas, and other entrances where non-employees enter the facility.) OSHIs should interview employees from various entry points (i.e., either in-person or through remote means) to verify adherence to the procedures.
    - Methods to limit entrance to the facility are flexible but may include posting signs at the door instructing patients with fever, respiratory symptoms or other symptoms of COVID-19 to return to their vehicle (or remain outside if they are pedestrians) and call the telephone number for the healthcare center so that triage can be performed prior entering.
  - d. OSHIs should determine how patients, residents or non-employee visitors are screened and document the findings. OSHIs should interview management (e.g., the person in charge of infection control) when making this determination.
  - e. It may be helpful to review documents used as guidance for determining the screening procedures implemented. OSHIs should obtain a copy of any checklist or protocol being used to screen non-employees coming into the facility.
  - f. OSHIs should investigate to determine if any group of non-employees may be excluded from the employer's screening program and document that screening is done on all shifts.
    - All individuals entering the facility must be screened for COVID-19 symptoms including clients, patients, residents, delivery people, and other visitors, and other non-employees.
    - Screening methods are flexible and may include in person or self-monitoring temperature or health surveys, upon arrival. Screening policies could include requiring hand hygiene at screening stations and mandatory use of source control (such as face coverings)in accordance with CDC's Infection Prevention and Control Recommendations (See also bullet e. below ) if in-person screening is performed. Screening may also include an electronic monitoring system that require non-employees self-report symptoms or exposures (e.g., absence of fever and symptoms of COVID-19, absence of a diagnosis of SARS-CoV-2 infection in the prior 10 days, and confirm they have not been exposed to others with SARS-CoV-2 infection during the prior 14 days), prior to arrival at the facility.



- g. In addition to screening, paragraph 29 CFR § 1910.502(d)(2) requires triage of any individual who may be experiencing COVID-19 symptoms. OSHs should inquire about any triage protocols and decision-making following triage.
- Triage enables the facility to make decisions about access restriction, isolation, and/or referral of symptomatic persons for further medical evaluations, testing or treatment. Triage also assures more effective implementation of the appropriate level of personal protective equipment and other protections for employees. Patient segregation in healthcare settings also reduces nosocomial (healthcare-acquired) infections for employee.
- h. OSHs should document patient management strategies. Patient management strategies must be in accordance with the CDC's COVID-19 Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic dated February 23, 2021, at [www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations](http://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations), which has been incorporated by reference in 29 CFR § 1910.509, and may include:
- Advising patients that they should put on their own well-fitting form of source control before entering the facility and taking steps to ensure that everyone adheres to source control measures (see [www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html#source-control](http://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html#source-control)) and hand hygiene practices while in a healthcare facility.
  - Screening and isolating patients showing symptoms of COVID-19 in an examination room with the door closed; segregating those patients from other patients seeking care; designating a well-ventilated space as a waiting area to allow waiting patients to separate by 6 or more feet, with easy access to respiratory hygiene supplies.
  - For inpatient or residential care of a COVID-19 positive or suspected COVID-19 patient, place the patient in a single-patient room, if available, and/or, where single-patient rooms are not available, cohort patients with the same infection.

NOTE: The standard encourages employers to use telehealth as a means to limit the number of people in the facility. Telemedicine or Telehealth is the use of electronic information and telecommunication technology to get the health care needed while practicing physical distancing. This often involves a phone or a device with internet capabilities. While telehealth minimizes the risk of transmission for healthcare personnel and patients, it also can reduce the strain on personal protective equipment supplies. If the employer needs assistance with telehealth, OSHs should direct them to the CDC website:

[www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf](http://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf).

## 2. Citation Guidance.

- a. If OSHs find deficiencies in any portion of paragraph 1910.502(d) (except for telehealth), the applicable provision in paragraph 1910.502(d) may be cited.

**NOTE:** The telehealth recommendation is an optional portion of the standard and thus cannot be cited. However, it may be a form of abatement for a citation of 1910.502(d)(2) if the employer is not adequately managing patients to minimize risk of transmission to employees.

- b. If the employer did not include the patient screening and management in the written COVID-19 plan, the OSHI may cite for the deficiency in the plan.
- c. If employees with direct patient care are not trained on patient screening and management, 1910.502(n)(1)(ii) may be cited.

#### **F. Standard and Transmission-Based Precautions**

29 CFR § 1910.502(e) establishes the requirements for employers to develop and implement policies and procedures for Standard and Transmission-Based Precautions.

##### **1. Inspection Guidance.**

- a. In accordance with 29 CFR § 1910.502(e)(1), employers in settings where healthcare services, healthcare support services, or mortuary services are provided, must develop and implement policies and procedures to adhere to Standard and Transmission-Based Precautions in accordance with “CDC’s Guidelines for Isolation Precautions,” dated 2007, which is incorporated by reference as specified in 29 CFR § 1910.509.
  - OSHIs should be familiar with the above referenced guidelines prior to conducting inspections.
- b. OSHIs should request the transmission-based policies and procedures and conduct interviews with the designated employer representative(s). Conduct employee interviews to determine whether the employer has developed and implemented these policies and procedures. Document whether or not the employer has developed and implemented the policies and procedures.

**NOTE:** The guidance documents are available at the links below:

- [“CDC’s Guidelines for Isolation Precautions,”](#) dated 2007.

##### **2. Citation Guidance.**

If OSHIs determine that the policies and procedures required by 1910.502(e) have not been developed or implemented, they may consider issuing a citation for 1910.502(e).

#### **G. Personal Protective Equipment**

29 CFR § 1910.502(f) establishes the requirements for healthcare employers to provide and ensure the use of PPE, such as facemasks, goggles, gowns in accordance with Subpart I. This section also covers respiratory protection requirements and the applicability of 29 CFR § 1910.134.

29 CFR § 1910.502(f)(1) requires a sufficient number of facemasks meeting the standards definitions to

be provided and worn by each employee over the nose and mouth when indoors, and when riding in a vehicle with another person for work purposes. Employers may permit employees to wear their own facemasks as long as they meet the same specifications.

The employer may provide or allow employees to provide their own respirators in lieu of using facemasks. Where respirators are used in lieu of required facemasks, 29 CFR § 1910.504 will apply.

#### **1. Inspection Guidance.**

- a. OSHIs should determine whether the use of facemasks is required under the standard, i.e. where healthcare employees work indoors around other individuals, or ride in a vehicle with another person for work purposes. This does not include commuting.

NOTE: Paragraph 29 CFR § 1910.502(f)(3)(1)(iii) allows exceptions to the required use of facemasks in the following circumstances: (A) where a worker is alone in a room; (B) where employees are eating and are separated at least 6 feet apart or with barriers; (C) where workers wear respirators; (D) when masks impede communication (e.g., communication with deaf or hearing impaired persons); (E) when employees have medical contraindications; or (F) when the mask creates a greater hazard. Where feasible, alternative measures, such as use of a clear face shield must be used where these exceptions exist. However, for the exceptions marked D-F, other infection control concerns may exist that limit an employer's ability to implement use of a clear face shield as an alternative to facemasks.

- b. In order to determine compliance, OSHIs should consider requesting the employer to provide a sample facemask for examination. OSHIs should refer to product labeling for evidence of the type(s) of facemasks in use at the facility along with the brand, model number(s), size, and any notable approval language. Purchase invoices or unopened inventory (boxes) of the product may also satisfy this requirement.
- c. If employers are allowing employees to use their own facemasks, OSHIs should make sure that those facemasks meet the required specifications. Employers are not required to reimburse for employee-provided facemasks. However, OSHIs should determine if and how the employer ensured that employee-provided facemasks are compliant with the requirements.
- d. OSHIs should observe facemask positioning during the walk around portion of the inspection noting any instances of improperly positioned facemasks.
- e. Where facemasks are provided/used, OSHIs should determine if the employer is ensuring that employees change facemasks at least daily and whether the employer replaces them if soiled or damaged. In workplaces where facemasks may become wet, soiled or damaged and require replacement more frequently, employers may provide face shields to be worn over facemasks to reduce the frequency of changes throughout the workday.
- f. Where the employer requires the use of face shields, OSHIs should determine if face shields are cleaned at least daily and are not damaged, with cracks or voids.
- g. OSHIs should evaluate the use of respirators in accordance with and PPE in accordance with 29

CFR § 1910.134 and PPE (e.g., gloves, isolation gowns or protective clothing, eye protection), used in accordance with Subpart I, when employees are exposed to a suspected or known COVID-19 positive person as required by 29 CFR § 1910.502(f)(2) .

- If document(s) and/or interview(s) provide evidence that employees are not protected in accordance with the standard while exposed to suspected or known COVID-19 positive individuals, OSHIs should note the finding(s) and gather evidence regarding specific task description(s), frequency, and duration.
- h. OSHIs should evaluate whether the protective equipment required by 29 CFR § 1910.502(f)(3) are provided and used for aerosol-generating procedures.
- When aerosol-generating procedures are performed on a patient who is suspected or confirmed to be COVID-19 positive, the employer must provide respiratory protective equipment in accordance with 29 CFR § 1910.134.

NOTE: Refer to 29 CFR § 1910.502(g) for additional requirements during aerosol-generating procedures.

- Gloves, gown or protective clothing, and eye protection are required for employees during aerosol generating procedures on patients with suspected or confirmed COVID-19.
- i. 29 CFR § 1910.502(f)(4) allows the employer to provide a respirator (or permit the employee to provide his/her own) instead of a facemask for conditions covered under in 29 CFR § 1910.502(f)(1)(i) or 29 CFR § 1910.502(f)(1)(ii). However, the employer must follow requirements for a Mini-Respiratory Protection Program found in 29 CFR § 1910.504.
- j. 29 CFR § 1910.502(f)(5) requires that employers provide respirators and PPE for Standard and Transmission-Based Precautions in accordance with CDC’s guidelines for Isolation Precautions and Subpart I.

NOTE 1: Facemask, as defined in paragraph (b) of this section, is a term used by OSHA and is not synonymous with the same term when used by the FDA. It is important to note the differences when verifying the supplied facemask is cleared or authorized by an FDA EUA for use in accordance with paragraph (b) of this section. OSHA refers to these cleared or authorized surgical masks as facemasks. See also [www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19](https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19).

NOTE 2: The term “suspected” for purposes of this standard, follows CDC’s Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic: [www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations](https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations).

## 2. Citation Guidance.

- a. A serious violation may be considered when evidence supports deficiencies For example:
  - When facemasks are required, if employer-provided facemasks (or ones permitted employees to optionally provide their own) do not meet the required specifications, then the OSHI may

issue a citation for 1910.502(f)(1).

- Where reusable facemasks are provided by the employer, if OSHIs determine that employees are unable to obtain clean units at least daily, and/or replacements if their current units get soiled or damaged, and/or replacements at the frequency specified by the manufacturer, they may consider issuing a citation for 1910.502(f)(1)(ii).
- b. OSHIs may cite 1910.502(f)(2)(i) when respirator(s) are not provided when employees are exposed to suspected or confirmed COVID-19 people. In situations where respirators are not used in accordance with § 1910.134.
- c. When employee exposures to suspected or confirmed COVID-19 are documented and the employer fails to provide PPE such as gloves, isolation gowns or protective clothing and/or eye protection OSHIs may cite 1910.502(f)(2)(ii). If employees are provided personal protective equipment, but the personal protective equipment is not used or maintained in accordance with 1910 Subpart I.
- d. In accordance with 1910.502(f)(4), where respirators are not required but the employer provides or allows the employee to provide their own respirator instead of required facemasks, the employer must comply with 1910.504. In most situations where respirators are not required but used in lieu of facemasks, violations of 1910.502(f)(4)(i)-(ii) would result in a serious violation. Note: While 1910.504 does not require a separate written respirator program if optional use of respirators, instead of required facemasks, if permitted, it should be addressed in the COVID-19 plan.
- e. Where respirators and/or other PPE are required by this standard, the employer's failure to provide or ensure the use of respirators and/or should normally be classified as serious.

## **H. Aerosol-Generating Procedures**

29 CFR § 1910.502(g) describes the requirements for limiting personnel, use of AIIRs, and cleaning/disinfection for aerosol-generating procedures on a person with suspected or confirmed COVID-19. Aerosol-generating procedures present a very high-risk for exposure to respiratory infections. Workers in a wide range of settings, such as emergency responders, healthcare providers, lab technicians, and mortuary workers, are at risk during aerosol-generating procedures. Aerosol-generating procedures covered by the scope of the standard, are described 29 CFR § 1910.502(b) *Definitions*.

### **1. Inspection Guidance.**

- a. 29 CFR § 1910.502(g)(1): OSHIs should determine if the number of personnel present during aerosol-generating procedures on suspected or confirmed COVID-19 patients is limited such that only employees essential to patient care and procedure are present.
- b. 29 CFR § 1910.502(g)(2): OSHIs should document the availability of an AIIR during an aerosol-generating procedure. The employer must offer justification when/if an AIIR is not used during an aerosol-generating procedure on a suspected or confirmed COVID-19 patient.

- See additional AIIR guidance found in sections [C.7](#), General Inspection Procedures, and [L](#), Ventilation of this Directive.
- c. OSHIs should verify cleaning and disinfection procedures are performed in the room or area following aerosol-generating procedures on COVID-19 patients. Such cleaning and disinfection should be in accordance with 29 CFR § 1910.502(j)(1).

## 2. Citation Guidance.

- a. If OSHIs determine the number of personnel present during aerosol generating procedures on suspected or confirmed COVID-19 patients is not limited, then a citation of paragraph 1910.502(g)(1) may be issued.
- b. If OSHIs determine the number of personnel present during aerosol generating procedures on suspected or confirmed COVID-19 patients are not done in AIIRs, then a citation of paragraph 1910.502(g)(2) may be issued.
- c. With the exception of 1910.502(g)(3), generally violations issued for these subparagraphs will result in single, non-grouped violation.

## I. Physical Distancing

### 1. Inspection Guidance.

- a. Employers are required to create physical distancing between employees. OSHIs shall establish, through employer and employee interviews, the means by which the employer ensures that physical distancing is maintained between employees, and how quickly corrective actions are taken if/when necessary. This provision does not apply to momentary exposure while people are in movement (e.g., passing in hallways or aisles) or for brief interactions dictated by operational necessities (e.g., checking patient vitals or monitoring equipment). The employer must ensure that each employee is separated from all other people by at least 6 feet unless the employer can demonstrate that such physical distancing is not feasible for a specific activity (e.g., hands-on medical care in healthcare).

Physical distancing can include methods such as: telework or other remote work arrangements; reducing the number of people, including visitors, in an area at one time; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees.

- b. OSHIs should determine whether the employer has designated eating and drinking areas with sufficient space to accommodate physical distancing or install appropriate physical barriers.
- c. If an employer claims it is infeasible to separate employees, the OSHIs should interview the employer to determine why physical distancing was not feasible and what alternative measures were implemented. The OSHIs should request any relevant documentation, which supports the

employer's position regarding infeasibility and document this in the casefile.

- d. When the employer establishes it is not feasible for an employee to maintain a distance of at least 6 feet from all other people, the employer must ensure that the employee is as far apart from all other people as feasible and implement the remaining layers of overlapping controls, including physical barriers, source control, hand hygiene, and ventilation, required by the standard to reduce the risk of COVID-19 transmission.

OSHI should obtain photos and measurements during the walkaround of the affected area as necessary to document the workspace layout, ventilation, and the physical distance between employees and non-employees. OSHI must ensure that the privacy of residents/patients is taken into account prior to taking any photos during the walk-around.

## 2. Citation Guidance.

- a. If the employer has not instituted any feasible physical distance measures, consider issuing a citation for 1910.502(h)(1).
- b. If, during the course of the inspection, the OSHI determines that employees were not physically distanced and the employer was not complying with other sections of the standard, such as wearing facemask or respiratory protection, then they should issue a citation for 1910.502(h) as well as the other section(s) of the standard that was/were not implemented. Note: Source controls (such as facemasks and face coverings) are not a substitute for physical distancing. Both practices should be used together, where feasible, with other protective measures as part of a multi-layered infection prevention strategy.

## J. Physical Barriers

29 CFR § 1910.502(i) establishes the requirements for creating physical barriers between employees at fixed workstations to block face-to-face pathways between individuals based on where each person would normally stand or sit. In healthcare, physical barriers are not required in patient care areas or resident rooms.

### 1. Inspection Guidance.

- a. At each fixed work location in non-patient care areas where each employee is not separated from all other people by at least 6 feet of distance, the employer must install cleanable solid barriers, except where the employer can demonstrate it is not feasible at the worksite or the barriers would not significantly reduce employee exposure.

OSHI shall establish, through employee interviews and observations, that barriers are present where appropriate. OSHI should assess whether barriers are at an appropriate height and positioned to block anticipated face-to-face pathways between individuals.

- b. Barriers may not hinder employee egress from an area during an emergency. See part §1910 Subpart E – Exit Routes and Emergency Planning for additional considerations.

- c. If an employer is claiming it is not feasible to separate employees with barriers in fixed locations where employees are not separated by physical distancing, OSHIs should determine what alternative measures (were implemented, and document that in the casefile. OSHIs should request any relevant documentation that supports the employer's position regarding infeasibility.

## **2. Citation Guidance.**

- a. Where physical distancing is not feasible, and if an employer has not installed feasible barriers, the OSHI may cite 1910.502(i).
- b. In rare situations where both physical distancing and physical barriers are not feasible, employers can still implement the remaining layers of overlapping controls, including face coverings, hand hygiene, and ventilation, required by the standard to reduce the risk of COVID-19 transmission
- c. If the OSHI determines that physical barriers were not installed where feasible and the employer was not complying with other sections of the standard, such as wearing facemask or respiratory protection, then a citation may be issued for 1910.502(i) in addition to citation(s) for other appropriate section(s) of the standard.

## ***K. Cleaning and Disinfecting***

29 CFR § 1910.502(j) establishes the requirements for cleaning and disinfecting. Cleaning and disinfecting are not the same. See the definitions section. High touch surfaces and equipment are required to be cleaned at least once a day following manufacturers' instructions for application of cleaners. In addition, when a COVID-19 positive person has been in the workplace within the last 24 hours, the employer must clean and disinfect. The employer must also provide alcohol-based hand rub that is at least 60% alcohol or provide readily accessible hand washing facilities.

### **1. Inspection Guidance.**

- a. OSHIs should determine whether the employer is cleaning high-touch areas and equipment at least once per day, and must determine if cleaning is in accordance CDC guidance and with the manufacturers' instructions for the cleaners used. Some examples of high touch surfaces include but are not limited to tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets and sinks, and touch screens.
- b. OSHIs should determine whether cleaning and disinfection are performed when a COVID-19 positive person has been in the workplace within the last 24 hours, and must determine whether this is done in accordance with CDC's "Cleaning and Disinfecting Guidance" (incorporated by reference, 29 CFR § 1910.509(b)(1)). OSHIs should request documentation such as the employer's COVID-19 log or verify through interviews when determining whether COVID-19 positive persons have been in the workplace.
- c. OSHIs should interview a sufficient number of affected employees on multiple shifts (where



applicable) as part of the overall assessment of the employer's efforts to ensure cleaning and disinfecting (where appropriate) are taking place.

- d. In a healthcare setting, cleaning and disinfection may be needed on a frequent basis throughout the day. The section requires that in patient care areas, resident rooms, and for medical devices and equipment, the employer must follow standard practices for cleaning and disinfection of surfaces and equipment in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations" and CDC's "Guidelines for Environmental Infection Control," pp. 86–103, 147-149 (both incorporated by reference, 29 CFR § 1910.509(b)(4)). OSHIs should determine whether employers follow manufacturers' instructions for application of cleaners and disinfectants.
- e. OSHIs should determine if hand washing facilities are readily available at the work site. Where hand-washing facilities are not feasible, OSHIs should determine whether the employer is providing alcohol-based hand rubs that contain at least 60% alcohol.

## **2. Citation Guidance.**

- a. If OSHIs document that the employer took no steps to clean and disinfect the facility, a citation for 1910.502(j)(1) and (j)(2), should be issued as appropriate.
- b. If the employer was aware of a COVID-19 positive person in the work area within the last 24 hours and did not conduct cleaning and disinfecting in accordance with CDC guidelines, a citation for 1910.502 (j)(2)(ii) may be considered. In accordance with the CDC guidance, if more than three (3) days have passed since the person who was sick or diagnosed has been in the workplace, then the cleaning and disinfection would not be necessary. A violation would not exist if the employer isolated the affected work area and restricted access to that area for at least three days following the presence of a COVID-19 positive person.
- c. Where disinfection is required, if OSHIs document that the employer did not use an EPA "List N" disinfectant for Coronavirus or a bleach solution, a citation for 1910.502(j)(1) and/or (j)(2)(ii) should be issued.
- d. If OSHIs determine that the employer did not follow standard practices and CDC's COVID-19 Infection Prevention and Control Recommendations and Guidelines for Environmental Infection Control when cleaning and disinfecting surfaces and equipment in patient care areas, resident rooms, and medical devices, a citation for 1910.502(j)(1) may be considered.
- e. If OSHIs document that the employer did not provide appropriate hand washing facilities or alcohol-based hand rubs that contained at least 60% ethanol or 70% isopropanol (where handwashing could not be provided), a citation for 1910.502(j)(4) may be issued.

## **L. Ventilation**

29 CFR § 1910.502(k)(1)(i)-(v) establish requirements for ventilation systems and apply to employers who own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s). These paragraphs do not require installation of new HVAC systems or AIRs for

healthcare to replace or augment functioning systems. See [Section H](#) on Aerosol Generating procedures and [Appendix A](#) for additional information on AIIRs.

## 1. Inspection Guidance.

- a. Where employers own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s), and AIIRs, OSHIs should evaluate if employers have implemented and maintained the ventilation controls meeting requirements of this section. Facility industrial hygienists, building maintenance and facility engineering personnel, should be interviewed to determine if HVAC systems are being operated and maintained in accordance with the manufacturers' instructions and design specifications.
- b. In healthcare, facility engineering personnel may be certified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) as a certified health care facility design manager, and/or certified healthcare physical environment worker, and should be interviewed, and OSHIs should review documents to verify maintenance and testing of AIIRs in healthcare when necessary.
- c. Employers must ensure that existing HVAC systems including in exam rooms and AIIRs are used in accordance with the HVAC manufacturers' instructions and specifications. Employers must maximize outside air, use air filters rated MERV 13 or higher where required, maintain and replace filters, and ensure that intake ports are clear of debris. OSHIs should request and examine documentation, such as HVAC system maintenance and filter change schedules and records, to ensure systems are properly maintained and air filters are replaced as necessary. OSHIs should also request and review purchase orders, which may indicate the compatible types of filters and filter efficiency ratings.
- d. OSHIs should visually inspect air intake ports for cleanliness and debris and OSHIs should consult the Salt Lake Technical Center (SLTC) for assistance in evaluating the adequacy of ventilation systems, as necessary. ASHRE guidance on the topic may also be consulted and is available at: <https://www.ashrae.org/technical-resources/filtration-disinfection#replacement>.

NOTE: In addition to the requirements for existing HVAC systems, all employers should also consider other measures to improve ventilation in accordance with "CDC's Ventilation Guidance," [www.cdc.gov/coronavirus/2019-ncov/community/ventilation](http://www.cdc.gov/coronavirus/2019-ncov/community/ventilation). This could include maximizing ventilation in buildings without HVAC systems or in vehicles.

## 2. Citation Guidance.

- a. If OSHIs determine that the employer is not adequately implementing and/or maintaining its ventilation system and filters, a citation for the specific paragraph of this section may be issued. This includes observations of HVAC systems that are not maintained according to manufacturer's instructions, use of inadequate filtration, and/or intakes that are blocked with debris.

- b. Citations for this paragraph should normally be classified as serious where employees have tested positive for COVID-19. See also sections on [Patient Management](#), on [Aerosol Generating Procedures](#), and [Appendix A](#) - Additional Specifications for AIIRs.

### ***M. Employee Health Screening and Medical Management***

#### **1. Inspection Guidance for Screening and Notification of symptoms:**

- a. *Screening:* In accordance with 29 CFR § 1910.502(l)(1)(i)-(ii), employers must screen each employee before each workday and each shift. Through interviews and records review, OSHIs should determine if COVID-19 symptom screenings are being conducted before each work day and each shift.
- Each workday refers to an 8-hour day or shift. For example if an employee enters the facility in the morning, works for 8 hours then leaves, but returns at a later time during the same 24-hour period to work a night shift, then two screenings are required, one for each time the employee begins a new workday or shift.
  - Screening methods can be flexible. Employers may screen employees in-person or ask employees to self-monitor before reporting to work. Some acceptable methods of COVID-19 screening and self-monitoring include temperature checks, employee questionnaires, and electronic screening apps.
  - Health screening personnel may need to be in close physical proximity to employees during in person screening. To ensure screeners and employees waiting to be screened are protected, an employer must continue to maintain compliance with all requirements of this standard for physical distancing, physical barriers, and facemask or other source control use. Screening personnel may use touchless digital thermometers. Note that during the course of their work shift, employees have to wear at a minimum facemasks in accordance with 29 CFR § 1910.502(f)(1)(i), or respiratory protection as dictated by the type of patient care they are engaged in.
  - If the employer requires a COVID-19 test, it must be provided at no cost to the employee. In such cases, OSHIs should verify that the employer does not require employees to pay for screening tests.
  - Records of test results are medical records and must be handled in accordance with 29 CFR § 1910.1020. Screening records, such as temperature readings or responses to symptom screening questions, that are made or maintained by a physician, nurse, other healthcare personnel, or a technician are considered to be employee medical records, as defined 29 CFR § 1910.1020. OSHIs should verify that such records are being retained in accordance with 29 CFR § 1910.1020(d)(1)(i) (i.e., records must generally be preserved and maintained for at least the duration of the workers' employment, plus 30 years).
- b. *Notification of symptoms:* In accordance with 29 CFR § 1910.502(l)(2)(i)-(iv), the employer must require employees to promptly notify the employer of a confirmed positive COVID-19 test, a

diagnosis or reported suspicion of COVID-19 infection by a licensed healthcare provider, or serious symptoms such as loss of taste, loss of smell, or when experiencing high fever ( $\geq 100.4^{\circ}$  F) combined with an unexplained cough. Prompt notification to the employer means as soon as possible after the employee became aware that they were experiencing one or more of the reportable conditions, taking into consideration time allowed for testing and obtaining testing results which can take up to 72 hours.

In accordance with 29 CFR § 1910.502(l)(3)(i)(A)-(C), the employer must notify employees within 24 hours of becoming aware of COVID-19 exposures in the workplace. Employers must notify affected employers and employees who were not wearing a respirator of their close contacts with a COVID-19 positive person and must include the date(s) that the contact occurred and location where the infected person was in the workplace. The notifications are not required by the presence of a COVID-19 positive patient where services are normally provided to suspected or confirmed COVID-19 patients.

- The employer has flexibility in the method employees use to notify them and mechanisms and procedures they implement to notify employees. As long as the requisite notifications are made, the employer has satisfied the requirement. Some suggested acceptable forms of notification of symptoms to the employer include verbal, e-mail/text, voice mail, written letter from the employee, a family member, and/or physician or other licensed health care provider.

OSHIs should determine through management and employee interviews whether the employers implemented procedures that required and encouraged employees to notify them of COVID-19 diagnoses, suspected infections or symptoms.

- OSHIs should determine through a combination of interviews and document reviews whether employees were notified of workplace exposures to COVID-19 positive individuals within 24 hours after the employer was notified that a person at its workplace(s) (including vendors, contractors, customers, visitors or other non-employees) is COVID-19 positive. OSHIs should also determine if the notifications included the required dates and locations and did not include any employee's name, contact information or occupation of the person who is COVID-19 positive.

## **2. Citation Guidance for Screening and Notification of symptoms:**

- a. Paragraph 1910.502(l)(i) should be cited if the employer failed to screen each employee in person or ask each employee to self-monitoring before each workday and each shift.
  - Paragraph 1910.502(l)(1)(ii) should be cited if the employer required COVID-19 screening test(s) and failed to provide it at no cost to employees.
- b. If the employer failed to require employees to notify the employer of COVID-19 illness, suspected infections or symptoms, then paragraph 1910.502(l)(2) should be cited.
  - If the employer has a policy requiring symptom notification, but employees fail to notify the employer of COVID-19 illness or symptoms, OSHIs should determine whether employees

received training on employer-specific policies and procedures for making such notifications. If it is determined that the employee(s) did not receive training, then 1910.502(n)(1)(viii) may be cited.

- If the employer failed to notify employees or employers of other exposed employees, or failed to make a timely notification (i.e., within 24 hours of becoming aware of a notifiable exposure), a citation may be issued for the specific applicable paragraph of 1910.502(l)(3)(i)(A)-(C).
- If the employer made timely notifications (i.e., within 24 hours) but failed to communicate all requisite information (e.g., missing exposure locations and/or dates), then a non-serious citation may be written for the specific applicable paragraph of 1910.502(l)(3)(i)(A)-(C). If evidence indicates that the omission of exposure locations and/or dates contributed to a serious condition, such as additional cases of COVID-19 infections, then a serious citation may be warranted.
- Employers shall not disclose confidential information in their notification to other employees. If the notifications included name, contact information, or occupation of infected employees, then paragraph 1910.501(i)(3)(ii) or 1910.502(l)(3)(ii) may be cited.

### 3. **Inspection Guidance for Medical Removal.**

29 CFR § 1910.502(l)(4)(i)-(iv) describes the steps the employer must take for removing and keeping employees removed from the workplace if the employer knows the employee(s) meet one of the notification criteria described in paragraph 29 CFR § 1910.502(l)(2)(i)-(iv).

- a. OSHIs should determine whether the employer has knowledge of employees' COVID-19 status by interviewing managers and employees and reviewing documents such as the OSHA 300 log, the COVID-19 log, employee and employer notification records (e.g., e-mails and/or letters) and any existing screening forms.
  - The employer is considered to have knowledge of an employee's COVID-19 status if: 1) the employee notified the employer as required in notification requirements sections; 2) the employer was notified by close contacts or contact tracers; 3) the employer notified close contacts; or 4) the employer notified employers of other employees working in the facility. Employer knowledge may also be established if the employee was displaying symptoms of COVID-19 during daily screenings.
- b. Employees must be immediately removed from the work place if they show symptoms, are COVID-19 positive, or were a close contact in the workplace to a person who was found to be COVID-19 positive. OSHIs should determine whether the employer is adhering to the requirement to remove workers who have been COVID-19 positive, had a COVID-19 diagnosis, suspected infection or reported symptoms as mandated by paragraphs 29 CFR § 1910.502(l)(2)(iii)-(iv).

NOTE: Employers may choose to use a more comprehensive [list of COVID-19 symptoms provided by CDC](#) in the deciding whether to remove or test employees who report additional

symptoms that are not included in the OSHA standard.

- c. Employees who are medically removed must remain removed from the workplace until the return to work criteria in 29 CFR § 1910.502(l)(6) are met, or kept removed until the employer provides a polymerase chain reaction (PCR) test at no cost to the employee.
  - The employer may require the employee(s) who were subject to medical removal to work remotely or in isolation if suitable work is available. Suitable work means any work that can be done with no contact with others. If an employee is too ill to work, remote work should not be required; and sick leave or other leave should be made available as consistent with the employer's general policies and any applicable laws.
  - OSHIs should determine through interviews and document review what procedures were implemented for removal (i.e., whether employees were given the opportunity to work remotely or in isolation if suitable work is available.)
- d. Employers are not required to remove any employee who is not COVID-19 positive and does not experience symptoms and has been fully vaccinated (i.e., 2 weeks or more following the final dose); or who recovered from COVID-19 within the past 3 months.
- e. OSHIs should determine through interviews and document review what procedures were implemented for removal (i.e., whether employees were given the opportunity to work remotely or in isolation if suitable work is available.)

#### **4. Citation Guidance for Medical Removal.**

- a. If the employer failed to remove employees who are suspected of being infected or showing symptoms, are positive for COVID-19, or were notified by the employer as a close contact, then the appropriate paragraph of 1910.502(l)(4)(i)-(iii) should be cited. Consider the facts of each case, such as whether the employee who had a close contact was previously vaccinated, when determining whether an employer's failure to remove the worker is citable.
- b. Citations of relevant sections should be considered on a case-by-case basis where employers removed workers but failed to fully observe the requisite follow up procedure (e.g., testing) and/or timeframes for returning employees to work (e.g., requiring employees to return before the return to work period has ended).

#### **5. Inspection Guidance: Medical Removal Protection Benefits and Return to Work.**

Paragraph 29 CFR § 1910.502(l)(5)(i)-(v) requires the employer to continue to provide regular pay and benefits to employees when they are removed or working remotely or in isolation due to a condition in paragraph 29 CFR § 1910.502(l)(4).

- a. Employers are required to reimburse medically removed workers up to \$1,400 per week. These requirements are modified after the second week based on the size of company. Employers with fewer than 500 employees are required to pay medically removed employees for only two thirds of the regular pay, up to \$200 per day (\$1,000 per week in most cases) after the second week. Further, the employer's payment obligation is reduced by the amount of compensation

- the employee received from any other source.
- b. OSHIs should request any documentation (e.g. emails, meeting minutes, chat discussions, memos, policy statements, medical records) that would help verify that an employee who was removed, working remotely, in isolation, or not working, was on medical removal as provided by this section.
  - c. OSHIs should determine through interviews and document review whether employees who were removed, working remotely or in isolation due to conditions in paragraph 29 CFR § 1910.502(l)(4) received the regular pay and benefits expected per paragraph 29 CFR § 1910.502(l)(5)(i-iv) of this section.
  - d. OSHIs should determine whether the employer is appropriately compensating employees who are medically removed due to COVID-19. The determination regarding compensation for medical removal may depend on various factors including the size of the company, other sources of compensation to the employee, and payroll records.
    - If the size of the company nationwide is ten employees or less at the effective date of this section, paragraph 29 CFR § 1910.502(l)(5)(iii) – (l)(6)(iv) does not apply.
  - e. Paragraph 29 CFR § 1910.502(l)(6) requires that the employer follow guidance from a licensed healthcare provider or CDC’s “Isolation Guidance” (incorporated by reference, 29 CFR § 1910.509); and CDC’s “Isolation Discontinuation Non-Healthcare Guidance” (incorporated by reference, in § 29 CFR § 1910.509) when making employee’s return to work decisions.
    - OSHIs should determine through interviews and document reviews if an employee’s return to work after a COVID-19 related workplace removal is in accordance with the appropriate CDC or licensed health care provider guidance.
  - f. The paragraph also provides that employees must not experience adverse action when they return to work. See paragraph 29 CFR § 1910.502(l)(5)(v) for specific guidance.
    - If OSHIs determine that an employee (or former employee, if they were fired) experienced adverse action or threat of adverse action as a result of medical removal, then a referral should be made to the Whistleblower Protection Program. OSHIs will follow the steps outlined in the anti-retaliation section of this directive.
6. **Citation Guidance for Medical Removal Protection Benefits and Return to Work. See also [Appendix C](#).**
- a. The employers with ten employees or less are encouraged but not required to abide by 1910.502(l)(5)(iii) – (l)(5)(iv).
  - b. If the employer did not pay the employee their regular rate of pay when working remotely or in isolation as part of medical removal, a citation may be issued for 1910.502(l)(5)(ii). The citation will be classified as serious due to the potential for discouraging reporting COVID-19 and exposing other employees to the disease.

- c. If an employee was allowed by the employer to work prior to the CDC or health care providers guidance, or state or local public health authorities if longer, then OSHIs may cite 1910.502(l)(6).

## ***N. Vaccination***

29 CFR § 1910.502(m) requires employers to support COVID-19 vaccination for each employee through reasonable time off during work hours and paid leave (e.g., paid sick leave, administrative leave, etc.) for the full vaccination series (i.e., each required dose) and any side effects experienced following vaccination. Generally, MNOSHA presumes that, if an employer makes available up to 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. MNOSHA understands that employers may be able to provide much less than four hours if employees do not need to travel for vaccinations, for example, if they are provided onsite.

### **1. Inspection Guidance.**

- a. OSHIs should determine through interviews and document review that employers support vaccination by providing reasonable time off and paid leave. OSHIs should determine through interviews whether the employer actively discourages or hinders employees from getting vaccinated.
  - Reasonable time off may include, but would not be limited to, time spent during work hours related to the vaccination appointment(s), such as registering, completing required paperwork, all time spent at the vaccination site (e.g., receiving the vaccination dose, post-vaccination monitoring by vaccine provider), and time spent traveling to and from the location for vaccination (including travel to an off-site location (e.g., a pharmacy). Reasonable time also may include situations in which an employee working remotely (e.g., telework) or in an alternate location must travel to the workplace to receive the vaccine.
  - Employers are not obligated to reimburse employees for transportation costs (e.g., gas money, train/bus fare, etc.) incurred to receive the vaccination, such as the costs of travel to an off-site vaccination location (e.g., a pharmacy), or travel from an alternate work location (e.g., telework) to the workplace to receive a vaccination dose.
- b. OSHIs should determine when vaccination or travel for vaccination took place to confirm whether the activities took place during work hours.
  - If an employee chooses to receive the vaccine outside of work hours, employers are not required to grant time and paid leave for the time that the employee spent receiving the vaccine during non-work hours. However, employers must still afford them reasonable time and paid leave to recover from any side effects that they experience during scheduled work time.

NOTE: Nothing in the ETS precludes an employer from taking steps beyond the requirements of this standard to encourage employees to get vaccinated, as appropriate under applicable laws and/or labor management contracts. The EEOC provides guidance on



COVID-19 vaccination as it relates to equal employment opportunity laws. See EEOC, December 16, 2020, [www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance-publication-3](http://www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance-publication-3).

Employees may decline vaccination for a number of reasons, including underlying medical conditions or conscience-based objections (moral or religious). There is no requirement that employees who decline sign a declination form.

## **2. Citation Guidance.**

- a. If employees incurred costs such as loss of pay or were required to take unpaid leave for the vaccination or adverse effects from the vaccination, OSHIs should consider citing 1910.502(m).

## ***O. Training***

29 CFR § 1910.502(n) applies to healthcare specific processes and procedures. The following guidance applies:

### **1. Standard Guidance.**

- a. 29 CFR § 1910.502(n)(1)(i)-(xii): Requires employers to provide training in an actionable manner that accommodates employee language and literacy levels. Employers must provide training, including reasonable accommodation as required by the Americans with Disabilities Act if needed by an employee with a disability, at no cost to the employee. The employee must be paid for time spent receiving training. If the employee must travel away from the workplace to receive training, the employer is required to bear the cost of travel, and the employee must be paid for travel time.
- b. 29 CFR § 1910.502(n)(3): An employer must ensure training is overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the duties required of employees.
- c. 29 CFR § 1910.502(n)(4): An employer could utilize a virtual or online training, but will need to ensure that the training method allows for the ability for employees 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.

### **2. Inspection Guidance.**

- a. Review employer-provided training materials (e.g., presentation slides, signs, posters, handouts) to determine if the company provided materials in accordance with employee language and literacy levels.
- b. When the employer provided training, OSHIs should pay particular attention to the times trainings were conducted. Establish whether employees were offered training during scheduled work times and at no cost to the employee.

- c. Employees play a particularly important role in reducing exposures because appropriate application of work practices and controls limit exposure levels. Employees therefore need to be informed of the grave danger of COVID-19, as well as the workplace measures included in their employers' COVID-19 plans because those measures are necessary to reduce risk and provide protection to employees. Employees must know what specific protective measures are being utilized and be trained in their use so that those measures can be effectively implemented.
- d. The OSHI should determine, through a number of interviews, to establish whether employees can demonstrate knowledge and comprehension of training materials and items denoted in the respective standard.
  - Document whether training was provided in a language and manner the employee could understand.
  - Determine whether employees can describe tasks and situations where exposure could occur.
  - Determine whether employees can describe PPE donning/doffing, cleaning, disinfecting, and storage procedures.
  - Determine whether employees can describe available sick leave policies.
  - Ask if employees can identify the designated Safety Coordinator for the COVID-19 Plan
  - Ask if employees were offered an opportunity to ask questions and receive answers; and
  - Ask whether employees can describe any changes that have occurred that would require retraining such as changes in the workplace that would increase risk to COVID-19 transmission.

### **3. Citation Guidance.**

- a. 1910.502(n) does not explicitly require the employer to maintain training records. In the event that the employer cannot provide training records, the OSHI will note it accordingly and will continue to gather evidence sufficient to establish any trend (e.g., material review, observations, and interviews) establishing a violative condition.
- b. When employees received inadequate information or training (e.g., training was insufficient for a significant number of employees to be able to demonstrate knowledge of the required information or employees' inability to practice safety measures), cite the applicable paragraph(s).
- c. OSHIs may issue a serious violation when the casefile supports an employer's failure to educate and train their employees.

### ***P. Anti-Retaliation***

29 CFR § 1910.502(o) requires the employer to inform each employee of their right to the protections

required by this section. It also prohibits employers from discharging or in any manner discriminating against any employee for exercising their right to the protections required by this section, or for engaging in actions that are required by this section.

### **1. Inspection Guidance.**

- a. Employers have flexibility regarding how they will inform employees of their rights and the prohibition on retaliation. Employers are able to choose any method of informing employees, so long as each employee is apprised of the information specified in the standard. Employees can be informed in writing, verbally during a staff meeting, or using other methods. This information can be provided along with other training required under the standard, or it can be provided separately.
- b. Through management and a sufficient number of employee interviews, OSHIs should determine if employees have been told of their rights to protection under this section.
- c. In accordance with paragraph 29 CFR § 1910.502(o)(2), employers are prohibited from discharging or discriminating against any employee for exercising their right to protections required by this section or for engaging in actions required by this section. OSHIs should gather information regarding alleged discrimination against employees for exercising their right to protections required by this section or for engaging in actions required by this section.
- d. In general, allegations of retaliation potentially violating this section will be handled on a case-by-case-basis as this section overlaps with section 11(c) of the OSH Act. However, some employees may not have the time or knowledge necessary to file a timely section 11(c) complaint or may fear additional retaliation from their employer if they file a complaint.
  - Investigations of allegations for a violation of this standard and section 11(c) should involve close collaboration between the OSHI, OMT Supervisor, Discrimination Supervisor and OMT Director.
- e. The standard allows MNOSHA to issue citations to employers for retaliating against employees, and require abatement including back pay and reinstatement, even if no employee has filed a section 11(c) complaint within 30 days of the retaliation. Also, this section of the standard allows MNOSHA to issue a single citation addressing retaliation against multiple employees.
  - However, an employee who wishes to file a complaint under section 11(c) may do so within the statutory 30-day period regardless of whether MNOSHA is investigating an alleged violation of the standard involving the same underlying conduct.

### **2. Citation Guidance.**

- a. If employees have not been informed of their rights to protections required by this standard, OSHIs may issue a citation for 1910.502(o)(1).
- b. If an investigation establishes evidence where the employer either discharged, or otherwise discriminated against, an employee for exercising their right to protections under this section, a

determination will be made (in consultation with the complainant, where appropriate) whether to pursue a remedy under section 11(c) or through a citation under 1910.502(o)(2), but not both. OMT Director has the discretion to determine under which avenue the resulting remedy is ultimately pursued.

### **Q. Requirements at No Cost**

29 CFR § 1910.502(p) requires that the employer meet all elements of the respective standard without shifting the cost to employee(s). This provision makes clear that the employer is responsible for all costs associated with implementation of the standard.

#### **1. Inspection Guidance.**

- a. MNOSHA considers costs to include not only direct monetary expenses to the employee, but also the time and other expenses necessary to perform required tasks.
- b. The term “no cost” means, among other things, no out of pocket expense(s) to the employee. The preamble recognizes that required training is provided at no cost to employees. Examples of violative conditions may include, but are not limited to, an employer requiring employees to:
  - Purchase COVID-19-related protective equipment and devices;
  - Purchase COVID-19-related cleaning and/or disinfectant materials;
  - Purchase COVID-19-related training and/or training materials; and
  - Pay for medical care and/or follow-up costs associated with work-related illnesses.
- c. OSHIs should determine through interviews and document reviews if employees incurred any monetary cost(s) during the review of the respective standards. Documentation may include purchase receipts, or medical bills from the employee.

#### **2. Citation Guidance.**

- a. 1910.502(p) will usually be cited as a non-serious violation when/if employees incur monetary costs associated with this section.
- b. Based on specific circumstances of a case, if the OMT Supervisor determines that it is appropriate to achieve the necessary deterrent effect, the unadjusted penalty may be up to the maximum penalty allowed for a non-serious violation.

### **R. Recordkeeping**

Paragraph 29 CFR § 1910.502(q) requires the retention and availability of all versions (not drafts) of the COVID-19 plan and the establishment and maintenance of a COVID-19 log for at least as long as the ETS stays in effect. This record retention does not apply to employers with 10 or fewer employees on the effective date of this section.

#### **1. Inspection Guidance.**

- a. OSHIs should verify that the employer is maintaining all versions (not drafts) of its COVID-19 plan.
- b. OSHIs should determine whether the employer had more than 10 employees at the time of the effective date of this section. Interviews with management, employee representatives, and review of payroll records may be necessary to determine whether the employer meets the threshold for maintaining a COVID-19 log.
- c. Where logs are required, OSHIs should review the employer's COVID-19 log and verify that all required information is recorded. The OSHI should interview the person responsible for maintaining the log, management, and a sufficient number of employees to determine if the logs are correct.
  - OSHIs should examine the log and ensure that employers recorded each instance identified in which an employee is COVID-19 positive (according to the definition in the standard) regardless if it is work-related. It is important for an employer to examine COVID-19 cases among workers and respond appropriately to protect workers, regardless of whether a case is ultimately determined to be work-related. OSHIs should inquire if the employer utilized the log to aid in identifying trends of the hazard in the workplace.
  - However, the COVID-19 log should not record incidences for employees who work exclusively from home and thus could not expose others in the workplace.
- d. The OSHI shall review the employer's injury and illness records to identify recordable illnesses or symptoms among employees with exposure(s) to patients with suspected or confirmed COVID-19. The review of the OSHA 300 log can aid in pinpointing any inconsistencies on the COVID-19 log and can provide insight on personnel who should be interviewed.
  - OSHIs shall examine additional injury and illness logs and ensure that employers who are required to maintain injury/illness records under 29 CFR part 1904 continue to record all work-related confirmed cases of COVID-19 on their OSHA Forms 300, 300A, and 301, or the equivalent forms. OSHIs must ensure the OSHA 300 log is not used as a substitute for the COVID-19 log required by this section. Note: So as not to discourage vaccination, employers are not required to record instances of adverse reactions to vaccinations on the OSHA 300 log.
- e. OSHIs should verify that, at a minimum, each instance recorded on the COVID-19 log contains the following information: the employee's name; contact information; occupation; 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, and that entries were made within 24 hours of the employer learning that an employee is COVID-19 positive.
  - The log may be kept in any manner that the employer chooses as long as the information required to be on the log is present and understandable and can be obtained and shared within the timeframes mentioned in the standard. The log must be maintained as a

confidential medical record. The disclosure of personal information entered on the COVID-19 log is limited to the access provisions set forth in paragraph 29 CFR § 1910.502(q)(3) . There is no requirement for the log to be kept at the establishment as long as the timeframes for availability can be met.

- f. OSHIs should verify through interviews and/or document reviews that the employer provides access to the COVID-19 log to employees and their representatives.
- g. OSHIs should also interview others not on the COVID-19 log to determine if there are any cases that should have been recorded but were not placed on the log.
  - Through interviews and document review, OSHIs should determine if employees, former employees, and their representatives have access rights to all versions of the written COVID-19 plan at any workplace where the employee or former employee has worked. Employees or former employees also have access to the COVID-19 log entry pertaining to their own illness(es) and to a version of the COVID-19 log that maintains employee privacy by removing personally identifiable information (e.g., names, contact information and occupation) of other employees. 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 COVID-19 symptoms must be included in the privacy-protected log.
  - OSHIs should document where employers fail to provide OSHA with access to the records required to be created and maintained by this section when requested.
  - The employer must provide these records (one free copy of each requested record) upon request for examination and copying not later than by the end of the next business day after the request was made.
  - If an inspection reveals that a business changed ownership while the ETS is in effect, the OSHI shall inquire to determine if the employer (i.e., the predecessor) transferred information on the COVID-19 log to the new owner (i.e., the successor).

## **2. Citation Guidance.**

- a. Where the employer fails to maintain all versions (not drafts) of their COVID-19 plan, the employer may be cited for a violation of 1910.502(q)(2)(i).
- b. Where the employer fails to establish or maintain the COVID-19 log or fails to record entries on the COVID-19 log, the employer may be cited for a violation of 1910.502(q)(2)(ii).
  - If there are no known COVID-19 positive cases at the establishment, the employer may not be cited for not having a COVID-19 log.
  - The employer shall not be cited for recording any additional information not mandated by the standard on the COVID-19 log.
- c. When the employer fails to have all of the information required for an entry on the COVID-19

- log, the deficiency should be documented and the employer may be cited for a violation of 1910.502(q)(2)(ii)(A).
- d. Where the employer has not maintained the log to ensure the employees' privacy and confidentiality, the employer may be cited for a violation of 1910.502(q)(2)(ii)(B).
  - e. When the employer does not maintain the COVID-19 log for the time that the standard exists, the employer may be cited for a violation of 1910.502(q)(2)(ii)(C).
  - f. A citation against the previous employer may be issued if the previous employer did not transfer all of the information entered on the COVID-19 log to the new owner. This is applicable if six months has not passed since the change of ownership and if the predecessor is still in business. The current employer may be cited if they did not retain the log if the OSHI can show that they did receive the log from the previous employer.
  - g. If a work-related COVID-19 illness was not entered into the 300 log and the COVID-19 log, both standards would be cited.
  - h. MNOSHA shall not cite for failure to comply with § 29 CFR 1904.5 and § 29 CFR 1904.7 mandates requiring employers to record worker side effects from a COVID-19 vaccination through May 2022.
  - i. Where citations are issued, penalties will be proposed only in the following cases:
    - Where MNOSHA can document that the employer was previously informed of the requirements to keep records; or,
    - Where the employer's deliberate decision to deviate from the recordkeeping requirements, or the employer's plain indifference to the requirements, can be documented.

## **S. Reporting to MNOSHA**

29 CFR § 1910.502(r)(1)(i) requires the employer to report work-related COVID-19 fatalities to MNOSHA within 8 hours of learning about the fatality. 29 CFR § 1910.502(r)(1)(ii) requires the employer to report each work-related COVID-19 in-patient hospitalization within 24 hours of learning about the in-patient hospitalization. The criteria in 29 CFR § 1904.5 must be used to determine work-relatedness.

### **1. Inspection Guidance.**

- a. OSHIs should gather information through employer and employee interviews, and review documents such as the COVID-19 log and the OSHA 300 log when documenting apparent deficiencies in the reporting requirements.
- b. OSHIs shall evaluate that when reporting work-related COVID-19-related fatalities or hospitalizations to OSHA, the employer followed the requirements in 29 CFR § 1904.39 except for 29 CFR § 1904.39(a)(1) and (2) and (b)(6) at <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.39>, in accordance with 29 CFR § 1910.502(r)(2).
  - Note: An employer may “learn” of a COVID-19 fatality or inpatient hospitalization when a

family member or medical professional reports it to the employer or through another employee at the company. It is the employer's responsibility to ensure that appropriate instructions and procedures are in place so that managers, supervisors, company medical personnel, as well as other employees or agents of the company, who learn of an employee's death or in-patient hospitalization due to COVID-19 know that the company must make a report to MNOSHA.

- c. Note: Employers must give MNOSHA the following information for each fatality or in-patient hospitalization: the establishment name, the location of the work-related incident, the time of the work-related incident, the type of reportable event (i.e., fatality or in-patient hospitalization), the number of employees who died or were hospitalized, the names of the deceased or hospitalized employees, the employer's contact person and his/her phone number, and a brief description of the work-related incident.
- d. Note: If an employer makes a report to MNOSHA concerning a COVID-19 in-patient hospitalization within the 24-hour period and that employee subsequently dies from the illness, the employer does not need to make an additional fatality report to OSHA.
- e. Note: In-patient hospitalization is defined as a formal admission to the in-patient services of a hospital or clinic for care or treatment (see 29 CFR § 1904.39(b)(9) and (b)(10)). The determination as to whether an employee is formally admitted into the in-patient service is made by the hospital or clinic. Treatment in an Emergency Room only is not reportable.

## **2. Citation Guidance.**

- a. When an employer fails to report within 8 hours of learning of the death of an employee resulting from COVID-19, the employer may be cited for a violation of 1910.502(r)(1)(i).
- b. When an employer fails to report within 24 hours of learning of a COVID-19 hospitalization, the employer may be cited for a violation of 1910.502(r)(1)(ii).
- c. If MNOSHA becomes aware of an incident required to be reported through some means other than an employer report, prior to the lapse of the 8-hour or 24-hour reporting period and an inspection of the incident is made, a citation for failure to report will normally not be issued.

If MNOSHA offices are closed, per 1904.39(b)(1) an employer must use the OSHA 24-hour hotline at 1-800-321-6742 (OSHA) or complete and submit a [Serious Event Reporting Online Form](#) at the OSHA website, and must not make the report to MNOSHA by fax, email, or by leaving a voice mail.

## **II. Mini Respiratory Protection Program**

29 CFR § 1910.504 applies to respiratory use when such use is not required, in accordance with 29 CFR § 1910.502(f)(4)(i) and (ii), namely, when the employer either optionally provides respirators or allows employees to use their own respirators for use in lieu of required facemasks. In the first situation, employers must provide training on the use of respirators, on conducting user seal checks on tight-fitting respirators, on the reuse of respirators and instruction on when to discontinue the use of respiratory



protection. In the second situation, employers must provide a notice to employees using text from 29 CFR § 1910.504(c).

The “**Respiratory Protection Guidance by Activity and Standard**” table in Appendix B of this directive contains a breakdown of respiratory protection usage and requirements, including a listing of the specific requirements applicable to common, foreseeable situations. Note that 29 CFR § 1910.504 only requires a user seal check and training, while medical and fit testing requirements are only performed if the employer is required to follow the Respiratory Protection Standard, 29 CFR § 1910.134.

#### **A. Inspection Guidance.**

1. OSHIs shall determine through workplace observations and interviews whether respirators are required by 29 CFR § 1910.502(f)(2), (f)(3), or (f)(5).
2. If respirators are not required under 1910.502(f)(2), (f)(3), or (f)(5), the OSHI shall determine whether the employer provides a respirator to an employee instead of the required facemask under 29 CFR § 1910.501(f)(4)(i). The OSHI shall determine whether the employer provided the training required by 29 CFR § 1910.504 to each employee wearing a respirator under 29 CFR § 1910.502(f)(4)(i).
  - OSHIs shall determine through interviews and document review that when the employer provides employees with respirators for use in lieu of required facemasks, the employer must provide training as described in 29 CFR § 1910.504(d)(1)(i)-(v). Note: Training is particularly important since fit testing and medical evaluation provisions are not included in 29 CFR § 1910.504.
3. If respirators are not required under 1910.502(f)(2), (f)(3), or (f)(5), the OSHI shall determine whether the employer permits an employee who is required to wear a facemask to wear their own respirator instead of the required facemasks, under 29 CFR § 1910.502(f)(4)(ii). The OSHI shall determine whether the employer has provided to the employee a notice containing a standardized text from 29 CFR § 1910.504(c).
4. The OSHI shall determine if employees wearing elastomeric respirators have previously been medically evaluated and found medically unable to wear a respirator, OSHIs should advise the employer of the hazard and to discontinue the practice until a new medical evaluation is performed as required by 29 CFR § 1910.504.
5. OSHIs should determine whether such employees using tight-fitting respirators perform user seal checks to ensure the respirator is properly sealed to the face. OSHIs should evaluate by asking employees to describe (or demonstrate) the procedures, focusing on whether the employees recognize the signs that leakage is occurring.
6. OSHIs should ensure that employers correct any problems discovered by employees during User Seal Check procedures. If employee(s) report that a user seal check fails, OSHIs should make a determination whether the employer provided alternate models or sizes of respirators.

NOTE: In circumstances where an employer requires respirator usage in an effort to offer a higher

degree of protection to workers not otherwise required to wear respirators, the employer must comply with the requirements of 29 CFR § 1910.134. Please refer to CPL 2-2.120, *Respiratory Protection Enforcement Procedures*, dated January 27, 2015 for MNOSHA interpretations and enforcement policies.

7. OSHIs should determine whether respirators used in accordance with 29 CFR § 1910.504 are being reused by healthcare employees. Employers must ensure that FFRs used by a particular employee is only reused by that employee. Note: Reuse is discouraged unless the employer is experiencing a shortage.
8. If reuse is observed, OSHIs should verify that FFRs are only reused by the original wearer and that previously used FFRs are not shared among multiple employees.
  - Reuse of FFRs is only allowed for healthcare associated industries during times of shortages in the respirator supply chain.
9. In the unexpected situation that an employer is asserting a shortage of respirators, OSHIs should request evidence of this claim by obtaining a daily inventory of respirators and the “burn rate” calculations along with applicable invoices and purchase orders.

NOTE: The employer may only use CDC strategies for N95 FFR shortages for a limited period of time and must take immediate steps to purchase and use other NIOSH-approved respirators, such as elastomeric respirators and PAPRs. CDC’s Strategies for Optimizing the Supply of N95 Respirators are found on the following webpage: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy/index.html>

10. OSHIs should verify that re-used respirators are not visibly soiled or damaged; and determine how the end-user verifies the integrity of respirator (i.e. fabric, straps, seal, nose bridge); whether the employee hygienically handles the respirator and successfully completes a user seal check on the re-used respirator; and whether the respirator has been used more than five (5) days in total.
11. OSHIs should verify the storage conditions of the respirators. Re-usable respirators must be stored in a breathable container (e.g. paper bag), away from water or moisture for at least five (5) calendar days prior to re-use. In practice, this means that an employer must provide at least five (5) FFRs to be used on different days.

NOTE: For FFRs, the exhalation process combined with environmental factors (i.e. increased temperature and/or humidity) may lead to higher moisture content in the fabric of the respirator and may promote the growth of pathogens. Respirators that are soiled or grossly contaminated with blood, respiratory secretions or other bodily fluids shall not be stored for later re-use.

#### **B. Citation Guidance.**

1. If the employer did not provide affected employees who provide and use their own respirators with the notice listed at 1910.504(c), the OSHI may consider issuing a non-serious citation.
2. If the employer failed to provide training in accordance with the requirements of 1910.504(d)(1), the OSHI may consider issuing citation(s) for any documented deficiencies listed in paragraphs

1910.504(d)(1)(i) through (v) of this section.

3. If the employer has not ensured employees are conducting user seal checks as outlined in 1910.504(d)(2), the OSHI may consider issuing citation(s) for any deficiencies as listed in paragraphs 1910.504(d)(2)(i)(A) and (B). If the employer fails to correct any problems with the user seal check process, a citation for 1910.504(d)(2)(ii) may be considered.
4. If the reuse of respirators was not compliant with the requirements of 1910.504(d)(3)(i), the OSHI may consider issuing citation(s) for any documented deficiencies listed in paragraphs 1910.504(d)(3)(i)(A) through (F) of this section. Deficiencies associated with the reuse of elastomeric respirators or PAPRs may be cited under 1910.504(d)(3)(ii).
5. If the employer does not require employees to discontinue use of respirators when employees report or experience signs and symptoms that are related to their ability to use a respirator, a citation for 1910.504(d)(4) should be considered. If employees are allowed to wear respirators and have previously had a medical evaluation that determined they were not medically fit to wear a respirator, a citation for 1910.504(d)(4) should be considered.

### **III. Drafting Citations for COVID-19 Violations**

- A. OSHIs should follow the general procedures for writing OSHA citations in the FCM and any specific procedures in this directive. The recommended classification of violations shall be as per the current version of the FCM, Violations, Chapter 4 and guidance set forth herein.
- B. The general procedures for classifying and grouping violations in the FCM should be followed. This document also contains some specific instructions for grouping violations of provisions in the COVID-19 ETS and other OSHA standards.
- C. Cases initiated before the effective date of the ETS should be carefully evaluated to determine whether case-specific findings and supporting employer knowledge warrant a violation of the General Duty Clause or another standard such as 1910.134.

### **IV. Training for MNOSHA Personnel**

- A. For all inspections or on-site visits where COVID-19 exposures are expected, OSHIs and OSHA consultation staff are expected to be knowledgeable of:
  1. Potential hazards which may be encountered at the site, including the potential hazards of COVID-19.
  2. Contents of the COVID-19 standard and this Direction.
  3. Knowledge of CDC guidance incorporated by reference in 29 CFR 1910.509 and on OSHA's web page at [www.osha.gov/coronavirus/ets/ibr](http://www.osha.gov/coronavirus/ets/ibr).
  4. Appropriate PPE to be worn. OSHIs and OSHA consultation staff shall follow the FSHM guidance for PPE.

## **V. Medical Examinations for MNOSHA Personnel**

- A. Many of the hazards OSHIs may encounter are specifically addressed by the medical surveillance requirements in OSHA standards. In accordance with MNOSHA personnel policy in the MNOSHA Field Safety and Health Manual – Chapter 6, the OSHA Management Team (OMT) director is responsible for implementing a medical examination program for employees with duties of OSHIs.
- B. The MNOSHA Field Safety and Health Manual – Chapter 4, includes medical evaluation requirements for MNOSHA personnel required to wear respiratory protection. The instruction requires that OSHIs be medically evaluated and found eligible to wear the respirator selected for their use prior to fit-testing and first-time use of the respirator in the workplace.

## **VI. Protection of MNOSHA Personnel**

- A. The OMT Supervisors will ensure that OSHIs evaluate potential sources of exposure and minimize transmission risk during on-site inspections.
  - 1. MNOSHA will continue to implement the MNOSHA Compliance COVID-19 Plan to reduce the risk of COVID-19 transmission to OSHIs during inspections.
  - 2. OSHIs will take all appropriate precautions as described in MNOSHA Compliance COVID-19 Plan. Supervisors shall ensure all staff comply with all COVID-19-related requirements.
- B. All personnel engaged in on-site inspection-related activities must follow the guidance detailed in the FSHM for appropriate PPE.
- C. In some instances, OSHIs may find that an employer's exposure assessment is inadequate, has not been performed at all, the employer has not fully and properly implemented hazard controls, or a COVID-19 outbreak has occurred. In such cases, use professional judgment to avoid entry into very high-risk work areas and discuss with a supervisor if needed.

## **VII. Dates.**

Effective dates: The rule is effective July 19, 2021. The incorporation by reference of certain publications listed in the rule is in effect as of July 19, 2021.

Compliance dates: Compliance dates for specific provisions are in 29 CFR § 1910.502(s). Employers must comply with all requirements of this section, except for requirements in paragraphs (i), (k), and (n) by July 19, 2021. Employers must comply with the requirements in paragraphs (i), (k), and (n) by July 21, 2021.

## **VIII. MNOSHA MOOSE Coding Instructions.**

All COVID-19-related enforcement activities (*i.e.*, inspections, complaints, and referrals, etc.) shall be coded as "N-16-COVID-19" under the Optional Code field.

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James Krueger, Director MNOSHA Compliance  
For the MNOSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachments: Appendix A – Additional Specifications for AIIRs and Ventilation References  
Appendix B – Respiratory Protection Guidance by Activity and Standard  
Appendix C - Additional Guidance for Determining Medical Removal Benefits

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.

## Appendix A

### ADDITIONAL SPECIFICATIONS FOR AIIRs and VENTILATION REFERENCES

See also: Federal OSHA Directive, CPL 02-02-078, Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, June 30, 2015, Appendix B, Testing Methods for Airborne Infection Isolation Rooms, [www.osha.gov/enforcement/directives/cpl-02-02-078](http://www.osha.gov/enforcement/directives/cpl-02-02-078) .

An AIIR is a single-occupancy negative pressure patient care room or enclosure (See definition of AIIR in [Section B](#) of this Directive). Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually spread from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs should be maintained under negative pressure (so that air flows under the door gap into the room). AIIRs should have an air change rate of  $\geq 6$  mechanical air changes per hour (ACH). Whenever feasible, the airflow rate should be raised to  $\geq 12$  mechanical ACH by adjusting or modifying the ventilation system or supplementing with air cleaning technologies. Achieving a total air change rate of  $\geq 12$  mechanical ACH should be a goal when designing new AIIRs or renovating existing AIIRs.

There should be direct exhaust of air from the room to the outside of the building or recirculation of air through a high-efficiency particulate air (HEPA) filter. The air from an AIIR should be exhausted directly to the outside of the building or, if recirculation of that air is unavoidable, passed through a HEPA filter. A HEPA filter is a filter that is at least 99.97% efficient in removing monodisperse particles of 0.3 micrometers in diameter. HEPA filters should be installed in the duct system exiting the room to remove infectious organisms from the air before the air returns to the general ventilation system. The employer should implement a scheduled maintenance program for HEPA filters that includes procedures for installing, removing, and disposing of filter elements.

Maintenance on HEPA filters should be performed only by adequately trained and protected personnel, and only while the ventilation system or room-air recirculation unit is off. Employees performing maintenance and replacing filters on ventilation systems that are potentially contaminated with COVID-19 should wear appropriate respiratory protection in addition to eye and hand protection. When feasible, HEPA filters can be disinfected in a 10% bleach solution or in another appropriate bactericide before removal. In addition, filter housing should be labeled with appropriate warnings. Filters and other potentially contaminated materials should be disposed of in accordance with applicable local or state regulations. Pre-filters should be handled and disposed in the same manner as HEPA filters.

In circumstances where air from an AIIR must be recirculated back into the room (e.g., where there is no general ventilation system), recirculation may be achieved by either fixed or portable room-air recirculation systems. Fixed recirculation systems are preferred to portable (freestanding) units because they can be installed with a higher degree of reliability and can have a higher airflow capacity than portable systems. Also, fixed systems reduce the potential for the short-circuiting of air as the distance between the air intake and exhaust is greater. AIIRs should be kept under negative pressure to induce airflow into the room or enclosure from all surrounding areas. Negative pressure must be monitored to

ensure that air is always flowing from the corridor (or surrounding area) into the AIIR. The negative pressure should be  $\geq 0.01$  inches of water gauge.

Negative pressure can be monitored using nonirritating smoke trails or other indicators to demonstrate that the direction of airflow is from the corridor or adjacent area into the AIIR. Pressure indicating equipment, such as continuous positive and negative pressure monitors, air velocity indicators, and alarms can be installed on an AIIR to verify proper room pressure.

Booths, tents, or hoods that discharge exhaust air into the room they are located in should incorporate HEPA filters at the discharge duct; the exhaust fan should be on the discharge side of the filter. If the device does not incorporate a HEPA filter, the exhaust should be exhausted directly to the outside and not recirculated.

Provisions should be made for emergency power to prevent interruptions in the performance of critical controls during a power outage. If there is no emergency power, the system should have dampers installed to isolate the AIIR or treatment room in the event of a power failure to prevent the backflow of contaminated air. If dampers are not automated, the facility should have a written procedure to initiate the timely closure of dampers if a power failure is detected.

CDC:

Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings, 2005, December 30, 2005/Vol. 54/No. RR-17.

[www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air](http://www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air)

American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE):

Negative Pressure Rooms

[www.ashe.org/negative-pressure-rooms](http://www.ashe.org/negative-pressure-rooms)

American Industrial Hygiene Association:

Reducing the Risk of COVID-19 Using Engineering Controls (September 9, 2020)

<https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/resources/Guidance-Documents/Reducing-the-Risk-of-COVID-19-using-Engineering-Controls-Guidance-Document.pdf>

## Appendix B

### RESPIRATORY PROTECTION GUIDANCE BY ACTIVITY AND STANDARD

Exposure Risk Examples	Patient Status for COVID-19 (if applicable)	Respirator Use	Written Program	Medical Evaluations	Fit Testing	Training	User Seal Check	Re-use	Discontinuation	Notice
Aerosol Generating Procedures	positive / suspected or unknown <sup>2</sup>	Employer provided. Required by 29 CFR § 1910.502(f)(3)(i)	Required to comply with 29 CFR § 1910.134							
Patient Care / All other employees	positive / suspected or unknown <sup>2</sup>	Employer provided. Required by 29 CFR § 1910.502(f)(2)(i)	Required to comply with 29 CFR § 1910.134							
Patient Care	negative / not suspected	Employer provided in lieu of required facemask per 29 CFR § 1910.502(f)(4)(i)	Part of COVID-19 Plan	N/A	29 CFR § 1910.504(d)(1) - (d)(4)			N/A		
		Employee use their own in lieu of required facemask See 29 CFR § 1910.502(f)(4)(ii)	Part of COVID-19 Plan	N/A	N/A			29 CFR § 1910.504(c)		
Patient Care / All other required respirator use	negative / not suspected	Required use for protection against other (non-COVID) hazards/infectious agents (TB, varicella, cauterization or amputation procedures, etc.).	Required to comply with 29 CFR § 1910.134							
All employees - Facemasks required		Facemasks required See 29 CFR § 1910.502(f)(1)(i)	Part of COVID-19 Plan	N/A	N/A			N/A		
All employees – Respirators optionally used in lieu of required facemasks		Employer provided See 29 CFR § 1910.502(f)(4)(i)	Part of COVID-19 Plan	N/A	29 CFR § 1910.504(d)(1) – (d)(4)			N/A		
		Employee provides their own See 29 CFR § 1910.502(f)(4)(ii)	Part of COVID-19 Plan	N/A	N/A			29 CFR § 1910.504(c)		
All other industries for required or voluntary respirator use for protection against any respiratory hazard.		Required	Required to comply with 29 CFR § 1910.134							
		Voluntary use of FFR	29 CFR § 1910.134 Appendix D							
		Voluntary use of Elastomeric or PAPR	See 29 CFR § 1910.134(c)(2)(ii)							

Footnotes:

1. See CPL 2-2.120 for enforcement of 29 CFR § 1910.134, and refer to this directive for enforcement of the ETS for COVID-19.
2. See sections on “Syndromic and Empiric Applications of Transmission-Based Precautions”, “Airborne Precautions” and Table 2 in [CDC’s Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings \(2007\)](#) document which is incorporated by reference in 29 CFR § 1910.509.



## Appendix C

### ADDITIONAL GUIDANCE FOR DETERMINING MEDICAL REMOVAL BENEFITS

Citations for not providing medical removal benefits shall not identify the employee other than by job title or department unless, due the size of the establishment, that would identify the employee. Any cost that will continue to accrue until payment, such as back wages, insurance premiums, and the like should be stated as formulas—that is, amounts per unit of time, so that the proper amount to be paid the complainant is calculable as of the date of payment. For example, “The employer did not pay the surgical technician’s regular rate of pay in the amount of \$15.90 per hour, for 40 hours per week, from July 7, 2021, through the date of payment, less the customary deductions when the employee was working remotely due to COVID-19 exposure.”

In order to determine the employee’s regular rate of pay, the OSHI should request copies of the employee’s payroll records and prior year’s W-2 form from the employer and copies of pay stubs and any other relevant documentation from the employee. (The employer and the employee may redact the employee’s social security number from the copied document and if they do not, the OSHI shall keep the record confidential unless it is needed for court.) It is important to realize that circumstances have changed many employees’ incomes since the pandemic began and the OSHI needs to take extra care to determine current wages. Employees with similar job titles and seniority (if possible) should be interviewed regarding their wages to determine actual current income.

OSHIs should cite 29 CFR § 1910.502(l)(5)(ii) where the employer has failed to provide medical removal benefits. The OSHI may consult with a Discrimination investigator if needed to help determine how to calculate the amount owed by the employer. If the employee would have received a bonus during this time period or a medical plan, this would be factored into the regular rate of pay. Punitive damages are not to be assessed as part of this section but may fall under Section 11(c). If the employee would have left the job for any other reason than for medical removal under this section, then the counting period for the regular rate of pay will stop at the day of separation.

If the employee experienced adverse action or threat of adverse action as a result of medical removal, then a referral should be made to the Discrimination unit.