

COMPLIANCE BULLETIN



OSHA COVID-19 ETS: Face Covering Requirements

On Nov. 4, 2021, OSHA [announced](#) a [COVID-19 vaccination and testing emergency temporary standard](#) (ETS) to address the grave danger of COVID-19 infection in the workplace. The ETS affects private sector employers with **100 or more employees**.

On Dec. 17, 2021, the 6th Circuit Court of Appeals [reversed](#) the stay the 5th Circuit ordered on Nov. 12, 2021 to block the ETS. As a result, OSHA has resumed ETS implementation and enforcement nationwide. OSHA will not issue citations before Jan. 10, 2022 (Feb. 9 for testing requirement) to employers that make reasonable, good faith efforts to comply. ETS opponents have already filed an appeal with the U.S. Supreme Court challenging the 6th Circuit decision. Employers subject to the ETS should monitor legal developments closely and consider what measures they would need to adopt if the Supreme Court upholds the ETS.

Current regulations require employees that are not fully vaccinated to wear a face covering while working indoors or when occupying a vehicle with another person for work purposes. Exceptions to this requirement include:

- When an employee is alone in a room with floor to ceilings windows and a closed door;
- While the employee is eating or drinking at the workplace;
- For identification purposes in compliance with safety and security requirements; and
- When an employee is wearing a respirator or face mask in accordance with other OSHA regulations.

Action Steps

Employers should review, understand and implement the requirements for face coverings in the workplace. Employers should also include these requirements in their written policies.

Face Coverings

Face coverings must:

- Completely cover the nose and mouth;
- Be made with two or more layers of a breathable fabric that is tightly woven;
- Be secured to the head with ties, ear loops or elastic bands that go behind the head;
- Fit snugly over the nose, mouth and chin with no large gaps on the outside of the face; and
- Be a solid piece of material without slits, exhalation valves, visible holes, punctures or other openings.

Important Dates:

Dec. 17, 2021

The 6th Circuit reinstates the ETS.

Jan. 10, 2022

Planned enforcement deadline for most ETS requirements.

Feb. 9, 2022

Planned enforcement deadline for ETS testing requirements.





Face Covering Requirements

Employers are required to ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes. Employers must ensure any face covering required to be worn under this ETS is:

- Worn by the employee to fully cover the employee's nose and mouth; and
- Replaced when wet, soiled or damaged (e.g., is ripped, has holes or has broken ear loops).

Face coverings can become soiled by splashes, sprays or splatters; from contact with a contaminated surface; or by touching/adjusting them with contaminated hands. Damaged face coverings may not fit properly and thus will have reduced effectiveness. Employees who work where there is potential for spills, sprays or splashes may need to change or replace their face coverings more frequently (e.g., in food, meat or poultry processing plants; water, sanitation or wastewater treatment facilities; or restaurants). Face shields may be worn in addition to face coverings to prevent them from getting wet and soiled.

To be worn properly, face coverings must completely cover the wearer's mouth and nose and must fit snugly against the sides of the face without gaps. Gaps can let air with respiratory droplets leak in and out around the edges of the mask. Face coverings with a nose wire help to avoid issues with glasses fogging and create a snug fit. Workers can also use a mask fitter or brace over a disposable mask or a cloth mask to prevent air from leaking around the edges of the mask.

Many aspects of proper mask use are easily observable (e.g., covering the mouth and nose as well as no observable gaps). To ensure face coverings are worn properly, employers can appoint a manager or senior employee to check that each unvaccinated employee is properly wearing a face covering at the start of and throughout each shift. Additionally, employers may consider utilizing workplace announcements (email messages, safety talks, etc.) or displaying signs or posters throughout the facility to inform employees of proper face covering usage.

For work where face coverings are expected to become dirty or soiled less frequently, employees may only need to replace their face coverings daily (e.g., in retail or office buildings). Regardless of work location, reusable face coverings can become soiled after each use and may be contaminated with bacteria and viruses, including the virus that causes COVID-19. To ensure performance and minimize the risk of contaminating employees after contact with a soiled face covering, the Centers for Disease Control and Prevention (CDC) recommends washing them whenever they get dirty, but at least once a day. The CDC has also published [guidance](#) on the selection, proper wearing, cleaning and storage of face coverings.

Employee's Right to Wear Masks

Employers must not prevent any employee, regardless of vaccination status, from voluntarily wearing a face covering or face mask unless they can demonstrate that doing so would create a hazard. While vaccination greatly reduces the risks of COVID-19, it does not eliminate the risk of the most severe consequences of COVID-19 (e.g., hospitalizations and fatalities) to workers. For this reason, workers must be permitted to wear face coverings or face masks even when not required to in order to further address residual risk.

This ETS provision is necessary because employees may have additional medical risk factors that may require enhanced precautions. Similarly, employees may choose to take additional reasonable precautions if they live or have frequent contact with family members or others at a higher risk of developing medical complications if they become infected with COVID-19.



Respirator Use

Employers must allow employees to wear a respirator instead of a face covering whether required or not (i.e., without regard to vaccination status). Employers may provide respirators to their employees, even if not required. This means that when a face covering is not required, employers must permit employees to wear a respirator or employers may even provide respirators. In such circumstances, employers must also comply with the mini respiratory protection program under [29 CFR § 1910.504](#).

There is an exception to required face coverings when employees are wearing a respirator or face mask in accordance with other OSHA standards (e.g., 1910.134, 1910.504, 1910.1030, 1910.502). Face mask or respirator use in accordance with other OSHA standards takes precedence over face covering use in this ETS.

Respirators, as defined under the ETS, are a type of personal protective equipment (PPE) that are certified by the National Institute for Occupational Safety and Health (NIOSH) or authorized under an Emergency Use Authorization (EUA) by the Food and Drug Administration (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. Respirator use can provide an additional level of comfort and protection beyond what is provided by face coverings for employees.

Mini Respiratory Program

OSHA intends the mini respirator protection program to be preserved for the duration of this ETS. Any references relied upon by OSHA in those sections of the Healthcare ETS are also incorporated explicitly into the rule-making docket for this ETS.

The mini respiratory protection program is designed to strengthen employee protections with a small set of provisions for the safe use of respirators. The mini respiratory protection program is designed to be easier and faster to implement than the more comprehensive respiratory protection program under [29 CFR 1910.134](#).

A mini respirator program is an important control to protect employees from the hazard posed by COVID-19. The mini respiratory protection program is primarily intended to be used to address circumstances where employees are not exposed to suspected or confirmed sources of COVID-19 but where respirator use could offer enhanced protection. For example, a respirator could offer enhanced protection in circumstances where a less protective (in terms of filtering and fit) face covering is required under the ETS ([29 CFR § 1910.501\(i\)\(1\)](#)). The decision to use a respirator in place of a face covering could be due to the higher filter efficiency and better sealing characteristics of respirators when compared to face coverings.

Customer or Visitor Face Covering Requirements

Under the ETS, employers must not prohibit customers or visitors from wearing face coverings. This provision is necessary because the increased use of face coverings also reduces the overall risk of COVID-19 transmission, protecting customers, visitors and employees.

OSHA has expressed its opinion that employers should consider creating a policy to encourage the use of face coverings by anyone who enters a business. In these cases, employers are encouraged to coordinate with state and local health agencies to obtain and respond appropriately to timely and accurate information (e.g., level of community transmission, health system capacity, vaccination coverage, capacity for early detection of increases in COVID-19 cases, and populations at risk for severe outcomes from COVID-19). Local conditions could influence the decisions that public health officials make regarding community-level strategies.

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Additionally, workers and their representatives may also negotiate additional face covering measures not required by the ETS through collective bargaining agreements or other collectively negotiated agreements.

Source: [Occupational Safety and Health Administration](#)