



American Federation of Government Employees, AFL-CIO

COMMENTS OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES ON
OSHA'S COVID-19 OCCUPATIONAL EXPOSURE TO COVID-19 IN HEALTHCARE SETTINGS
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The American Federation of Government Employees (AFGE), which represents more than 700,000 federal and DC government employees, including more than 260,000 health care workers across the nation, fully supports the Occupational Safety and Health Administration (OSHA) rulemaking on Occupational Exposure to COVID-19 in Healthcare Settings. We commend the work of OSHA staff, many of whom are represented by AFGE, and the leadership of OSHA and DOL in taking the next steps in promulgating a permanent COVID-19 standard.

A standard to protect health care workers from exposure to SARS-CoV-2 is still urgently needed. While we have more ways to control the spread of the virus, it has not been eliminated and health care workers, indeed many workers in other industries, continue to face this workplace exposure. The permanent standard should improve on the ETS and provide additional protections based on the experiences of the last two years. The standard should be grounded on the airborne transmissibility of SARS-CoV-2, and we urge OSHA to move quickly to ensure health care workers are protected.

OSHA has stated that “[w]ith the rise of the Delta variant this fall, and now the spread of the Omicron variant this winter, OSHA believes the danger faced by health care workers continues to be of the highest concern and measures to prevent the spread of COVID-19 are still needed to protect them”

(<https://www.osha.gov/coronavirus/ets>). Other variants and sub-variants are expected, and health care workers will be at their hospitals, nursing homes and other medical facilities, caring for those who become sick. They will be at risk of exposure and illness, and they need the maximum protections feasible.

When OSHA issued the Emergency Temporary Standard in June 2021, we welcomed it as a much-needed protection for health care workers. AFGE also urged OSHA to strengthen the standard, because we felt it could have been more protective. In written comments on the ETS submitted in August 2021, AFGE stated OSHA should include requirements to:

- Investigate whether workplace conditions contributed to the case and to put measures in place to prevent future cases.
- Require notification of exposure regardless of PPE use.
- Require employers to not only keep a log, but also to notify OSHA of any outbreaks.
- Require employers to include employee and employee representative participation in employer COVID-19 workplace safety plans, and not only “encourage” their participation.

The ETS has given workers a systematic way to be protected at work by requiring health care employers to put in place measures to mitigate exposure, and we still believe these recommendations would strengthen the final standard. We appreciate the opportunity to provide additional comments.

COMMENTS ON POTENTIAL CHANGES TO THE ETS

In response to the March 23, 2022, OSHA request for comments on potential changes to the ETS, we submit the following:

A.1--Alignment with CDC Recommendations for Healthcare Infection

We oppose OSHA aligning with CDC recommendations. Infection control practices are different than exposure prevention controls. OSHA standards outline employer responsibilities for reducing and eliminating exposure to workplace hazards. OSHA must not delegate this authority and its responsibility for worker health and safety to the CDC and its guidelines. The CDC has changed its recommendations and often relaxes them for the general public. For health care workers, who have workplace exposures to COVID-19, this has meant measures that were not as protective as needed.

For health care workers, the CDC return-to-work guidance was difficult to accept because they were often fearful that returning seemingly too early would put their patients and co-workers at risk of infection. Workers who are infected should not be in the workplace. There are questions about when people are infectious, and how many days they should be isolating, but they should not be in health care settings. At a time when health care workers are experience elevated levels of stress and anxiety due to COVID-19, they should not have to be burdened with the fear of putting others at risk if they return to work while still infectious. Health care employers should still be required to keep protections in place when they are changed for the public until an assessment is made to determine whether it should be changed for the workplace.

A.2--Additional Flexibility for Employers: "Safe Harbor"

We are opposed to having a "safe harbor" for employers who follow the CDC guidelines. Again, these are recommendations for the public and not specific to workplaces. CDC guidance is not based on the hierarchy of controls, as are OSHA standards, and may not have the protections needed to control exposure at different levels of mitigation. A similar proposal was debated by the Virginia Safety and Health Codes Board in reviewing its final permanent COVID-19 standard. Because CDC guidance changes, it would be difficult to know which one an employer is following. It would make it difficult for employees to know what protections are in place at a specific time, what they have a right to, and what they can expect. Without a requirement for employers to document what version of the CDC guidance they were following and how. It would be best for all employers to be required to follow the OSHA standard.

In addition, the CDC guidelines have not been as protective on respiratory protection as health care workers need. The CDC has recommended the use of surgical masks when most respiratory protections experts recommend the use of a fit-tested N95 respirator in health care settings. There have been news reports that hospitals, following this guidance, were refusing to allow employees and patients to use their own N95.

A.3--Removal of Scope Exemptions

We support the removal of scope exemptions. The final standard should cover all health care employers regardless of screening procedures. It should protect all employees who work in health care settings where there is a risk of COVID-19 exposure.

A.4--Tailoring Controls to Address Interactions with People with Suspected or Confirmed COVID-19

AFGE does not support tailoring controls. OSHA instead should protect all workers who are at risk of exposure. Tailoring controls would require employers to have COVID-19 patient areas, which many health care facilities no longer have at this point. Because without designated COVID-19 patient area or a way to identify suspected or confirmed COVID-19 patients, and without contact tracing requirements, this would not be a protective measure.

For some specific occupations, a risk assessment showing the risk of exposure has been eliminated, may allow for controls to be tailored. However, this would lower protections overall.

If OSHA, were to include the proposed change, the requirements should be specific on what employers should do to contain an outbreak. This would include what protective measures and controls would be reinstated or applied following an outbreak.

A.5.1--Booster Doses

AFGE supports including language that updates the meaning of “up-to-date” to reflect the most currently approved and recommended vaccines, beyond the initial doses, in keeping with ACIP and CDC recommendations. The scientific literature documents that vaccine efficacy wanes over time and vaccine recommendations are expected to change, particularly with anticipated new strains of the virus.

A.5.2--Employer Support of Employee Vaccination

AFGE supports including the requirements that OSHA is considering. The federal government has allowed up to 4 hours for employees to get the vaccine. Federal employees have had coverage for time away from work due to adverse effects, but that has now moved to employees using their own leave and seeking workers’ compensation benefits. Adding the requirement to allow up to 4 hours of paid time for vaccination and paid sick leave requirement included would remove a barrier some employees may face in getting the vaccine, i.e., taking unpaid time from work to get the vaccine or boosters or being afraid of losing pay if they experience any health effects from the vaccine.

Employers should be required to support employees who wish to follow the latest vaccine recommendations. Employers should be required to continue to give employees information on vaccines, their benefits and possible side effects. Whenever possible, employers should provide the vaccines or boosters on site. For most of the employers covered by the standard, there would be a requirement for employees to be vaccinated and having employer support would be an important part of compliance with that requirement.

OSHA states that most health care workers covered by this rule are covered by the CMS requirements, and we think it is important for employers to provide support for vaccination to employees not covered by the CMS rule. Higher vaccination rates would benefit the entire workplace.

A.5.3--Requirements for Vaccinated Workers

We believe that relaxing requirements based on individual vaccination status would be problematic, hard to enforce, and for workers it would be difficult to know when they should take additional precautions because they are working with or around other employees who are vaccinated and for whom requirements are relaxed.

We believe protections should remain in place for all workers. If there is consideration of a relaxing of the requirements, it should be based on transmission levels at the workplace and the vaccination rate of the workplace, and not on community transmission rates. It is hard to rely on community transmission rates at this point in time because there is less testing at the workplace, and individuals with concerns about exposure are taking home tests. The results of home tests are not being reported to any one authority, at least not systematically. People taking home tests may report to their own health care providers, and the health care providers are encouraged to report of the local health department. However, there does not seem to be any one way for the results of home tests to be recorded and tracked. For that reason, community transmission levels may not reflect the true transmission numbers.

For exposure notification, the requirements should not be relaxed, regardless of vaccination status. Exposure even among vaccinated individuals can lead to infection, as we have seen with break-through infections. In addition, a

health care worker who is vaccinated but exposed at work may infect others at the workplace and expose vulnerable family members at home.

OSHA should include paid medical leave for workers who become sick or who must quarantine after an exposure. They should not be at the workplace, and they should not suffer financially when they have to stay home sick or to protect others.

A.6--Limited Coverage of Construction Activities in Healthcare Settings

We are in support of including this requirement. While AFGE does not represent construction workers, we believe all workers with potential exposure to COVID-19 should be protected. That includes construction workers, maintenance workers, and others who are in shared spaces with suspected or confirmed cases of COVID-19. In the situations described by OSHA in the Federal Register, it is necessary to protect construction workers. In addition, if they are infected at a location where there is potential exposure, they may spread exposure and possibly infection to other areas of the health care facility.

A.7--Recordkeeping and Reporting

Recordkeeping and reporting requirements should be maintained. While there have been issues with the accuracy of the logs and with access to the logs, in general, the COVID-19 logs have been a great benefit to healthcare workers and their representatives, employers, and OSHA. The information is also useful in preventing the spread of infection and prompting employers when there is a need to implement more control measures. Surveillance is an important element in identifying clusters of cases, locations of cases, ultimately helps in controlling workplace hazards. In addition to current reporting requirements, OSHA should include a requirement similar to what Virginia, California, and other states have required, that employers notify OSHA of outbreaks when there are three or more cases of COVID-19 among workers in the same work area within 14 days.

We do not support the proposal to cap retention of the COVID-19 log for one year from the last entry. Employers should be required to retain the COVID-19 logs for five years, in alignment with the current requirements of the Recordkeeping Standard and other OSHA standards. The information in the logs is useful in the long-term for employers and for researchers. Employers should be using the information as they do the OSHA 300 logs—to identify patterns and to look for ways to further reduce exposure. While we all hope we do not have to deal with COVID-19 in the same urgent manner in the future, all signs indicate we will be dealing with it and other airborne viruses. Having the logs available not only for employers but also for researchers to study is beneficial. The 2022 omnibus appropriations package, for example, directs the National Institute for Occupational Safety and Health, CDC, to conduct a large-scale, comprehensive study to show the impact of COVID-19 infections and deaths by industry and occupation. Log retention for longer than one year would help this and other studies as researchers help us understand COVID-19 and its impact on the workforce.

A.8--Triggering Requirements Based on the Level of Community Transmission

We do not support changing requirements to follow CDC recommendations on community transmission levels. Our concern is that with the declining level of workplace testing and the rising level of home testing, the community transmission levels are not an accurate reflection of the transmission experience in a given community. Therefore, it would be counterproductive to relax requirements based on a low community transmission level if that number is not based on all testing and reporting because more people are using home tests.

According to a Washington Post article published on April 15, 2022, *Covid cases in D.C. region quietly rise again, fueled by BA.2*, "Since loosening mask mandates and other restrictions earlier this year, local government leaders have told residents that those trying to avoid the virus should monitor public health data to assess personal risks. But area health departments are reporting far less information to the public than they regularly did up until this

winter. Even the health departments don't know as much now about who is testing positive for the virus, because so many people can now test themselves at home."

A.9--Evolution of SARS-CoV-2 into a Second Novel Strain

AFGE supports OSHA including language that makes it clear that the standard applies to any variants that may evolve from SARS-CoV-2 in the future and those variants resulting from SARS-CoV-2, including those that are designated by a different name, or that result in similar transmission, infection, and disease, as COVID-19. In the final standard, OSHA should include language that future strains may require additional or different protective measures than COVID-19 in its current form.