


# OSHA's COVID-19 Standard for Healthcare Employers – What You Need to Know Now

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akerman

# Today's Presenters



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# Objectives

## Understanding the Healthcare COVID-19 Emergency Temporary Standard

- Determine whether your company is required to comply with the ETS or whether it is exempt from compliance
- Understand when compliance is expected by OSHA/when the ETS becomes effective
- Become familiar with the ETS' main requirements
- Determine what steps your company needs to take in order to become compliant with the ETS



# Effective Date

- OSHA published the ETS in the Federal Register = June 21, 2021
- Effective on July 6, 2021: elements of the ETS include
  - Covid-19;
  - Patient screening and management;
  - PPE;
  - Physical distancing while indoors;
  - Paid leave for vaccinations and recovery;
  - Medical Management requirements.
- Effective on July 21, 2021, elements of the ETS that are enforceable
  - Onsite ventilation;
  - Employee training on COVID-19 risks and mitigation; and
  - Physical barriers at workstations.

# Who is Subject to the ETS?

- Covered employers
- Applies to all settings where an employee provides healthcare services
- Also applies to settings where healthcare support services are provided



# What Are Healthcare Services?

*“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, home health and hospice care, emergency medical response, and patient transport. For the purposes of this section, healthcare services include autopsies.”

# What Are Health Support Services?

*“Healthcare support services mean services that facilitate the provision of healthcare services. Healthcare support services include patient intake/ admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning/reprocessing services.”*

# Healthcare Services Embedded in Another Setting?

- Where a healthcare setting is embedded within a non-healthcare setting (e.g., medical clinic in a manufacturing facility or prison, walk-in clinic in a retail setting such as a grocery store), the ETS generally applies, but only to the embedded healthcare setting and not to the remainder of the physical location.
- Where emergency responders or other licensed healthcare providers enter a non-healthcare setting to provide healthcare services, the ETS also generally applies, but only to the provision of the healthcare services by that employee.
- For example, where a physician assigned to work in an embedded clinic or an emergency medical responder enters the floor of a manufacturing plant or the residential area of a prison to provide healthcare services to a sick employee or sick prisoner, the ETS generally applies, but only to the provision of healthcare services by the physician or emergency responder, and not to all other employees in the setting.



# Any Exemptions?

- The ETS does not apply in the following settings:
  - provision of first aid by an employee who is not a licensed healthcare provider;
  - dispensing of prescriptions by pharmacists in retail settings;
  - 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
  - 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
  - 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

# Exemptions Continued

- healthcare support services not performed in a healthcare setting (such as off-site laundry or off-site medical billing)
- telehealth services performed outside of a setting where direct patient care occurs
- Also, ETS sections requiring PPE, physical distancing, and physical barriers do not apply in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present



# Main Requirements of the ETS

- COVID-19 Plan
  - OSHA model plan
  - Hazard Assessment
- Patient Screening and Management
- Personal Protective Equipment
  - Employer's Responsibility
  - Exceptions
- Physical Distancing
  - 6 Feet Distance when indoors
- Physical Barrier
- Cleaning and Disinfection



# OSHA Model Plan

## COVID-19 Plan Template

- OSHA's COVID-19 Healthcare Emergency Temporary Standard (ETS), paragraph (c), requires employers to develop and implement a COVID-19 plan for each workplace to protect workers from COVID-19. If an employer has more than 10 employees, the plan must be written. Employers may use this template to develop a COVID-19 plan for their workplace.
- If employers choose to use this template, there are 2 STEPS to complete:
  - STEP 1: Determine if OSHA's COVID-19 Healthcare ETS applies to your workplace or portions of your workplace.
  - STEP 2: Customize this COVID-19 plan template for your workplace.

### STEP 1: Determine if the ETS applies to your workplace or portions of your workplace.

You may use the ["Is your workplace covered by the COVID-19 Healthcare ETS?"](#) flow chart to determine whether and how OSHA's COVID-19 Healthcare ETS applies to your workplace. Note that this determination must be made for each workplace where your employees work.

### STEP 2: Customize this COVID-19 plan template for your workplace.

Customize areas marked with blue text and modify (change, add, or remove sections of) this document until the plan accurately represents your policies. The plan must match the policies, procedures, and controls that will be implemented in the workplace, and must accurately describe what employees are expected to do. Consult with non-managerial employees and their representatives, if any, before finalizing this plan.

[Employer name]'s COVID-19 Plan

## COVID-19 Healthcare ETS



The ETS was officially filed in the Office of the Federal Register on June 17, 2021, and it became effective when it was published on June 21, 2021.

### About the Rule

#### ETS Regulatory Text (29 CFR 1910, Subpart U)

- 1910.502 - Healthcare.
- 1910.504 - Mini Respiratory Protection Program.
- 1910.505 - Severability.
- 1910.509 - Incorporation by Reference.

Federal Register

Materials Incorporated by Reference

News Release

[Fact Sheet – Subpart U – COVID-19 Healthcare ETS](#)

[Summary – COVID-19 Healthcare ETS \(Spanish\)](#)

[Fact Sheet – COVID-19 Healthcare ETS \(Spanish\)](#)

[Fact Sheet – Mini Respiratory Protection Program](#)

### Implementing the ETS

[COVID-19 Plan Template](#)

[COVID-19 Healthcare Worksite Checklist & Employee Job Hazard Analysis](#)

[Sample COVID-19 Log](#)

[Reporting COVID-19 Fatalities and In-Patient Hospitalizations to OSHA](#)

[Employer Notification Tool](#)

[Communication and Coordination Between Employers](#)

[Sample Employee COVID-19 Health Screening Questionnaire \(Spanish\)](#)

[Notification Removal and Return to Work Flow Chart for Employees](#)

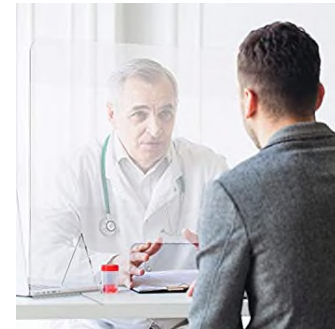
[Notification Removal and Return to Work Flow Chart for Employers](#)

[Employee Training Presentation – Healthcare ETS](#)

[Employee Training Presentation – Mini Respiratory Protection Program](#)

# Main Requirements of the ETS (Contd.)

- Health Screening and Medical Management
  - Required to screen employee each workday and before each shift
  - Employee Notice Requirement
  - Employer Notice Requirement
  - Medical Removal From the Workplace
- Vaccination
  - Reasonable time and paid leave
- Anti-Retaliation



## EMERGENCY TEMPORARY STANDARD

# Sample Employee COVID-19 Health Screening Questionnaire



### Sample Questions for Employees

Please read each question carefully and circle the answer that applies. No health information or questionnaire answers will be shared with anyone outside of your organization.

Have you experienced any of the following symptoms of COVID-19 within the last 48 hours?		
• Fever or chills	Yes	No
• Cough	Yes	No
• Shortness of breath or difficulty breathing	Yes	No
• Fatigue	Yes	No
• Muscle or body aches	Yes	No
• Headache	Yes	No
• New loss of taste or smell	Yes	No
• Sore throat	Yes	No
• Congestion or runny nose	Yes	No
• Nausea or vomiting	Yes	No
• Diarrhea	Yes	No

<https://www.osha.gov/sites/default/files/publications/OSHA4132.pdf>

***Sample Email Notification to Employees Working in the Same Well-Defined Portion of the Workplace***

Dear [Employee Name],

We have been notified that an individual who was present in our workplace on [MM/DD/YYYY] has been diagnosed with COVID-19. We are separately notifying people who appear to have had close contact with the individual, but we want to alert everyone working in the same well-defined portion of the workplace to the possibility of exposure. If you experience symptoms of COVID-19, such as fever, chills, cough, difficulty breathing, new loss of taste or smell, or other symptoms, please contact [COVID-19 Safety Coordinator Name and Contact Information] and consider consulting with your healthcare provider about COVID-19 testing. As always, [Company Name] will protect all employee medical information.

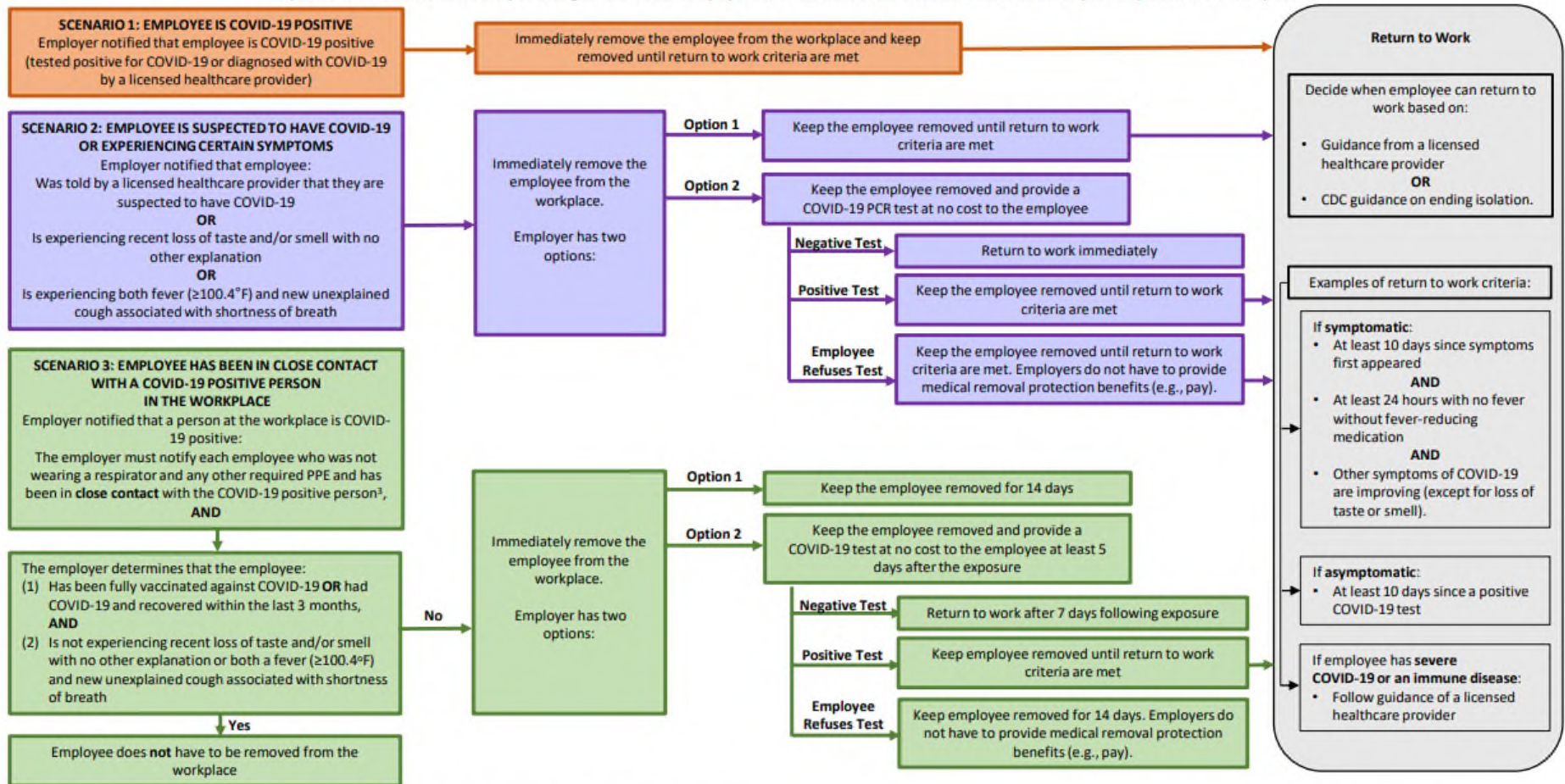
Sincerely,  
[Signatory]

<https://www.osha.gov/sites/default/files/publications/OSHA4131.pdf>



## ETS Compliance Guidance for Employers – Paid<sup>1</sup> Medical Removal of Employees and Return to Work

This flow chart explains the steps that employers must take when notified that an employee is COVID-19 positive, told by a licensed healthcare provider that they are suspected to have COVID-19 or is experiencing certain COVID-19 symptoms, or has been in close contact with a COVID-19 positive person in the workplace.<sup>2</sup>



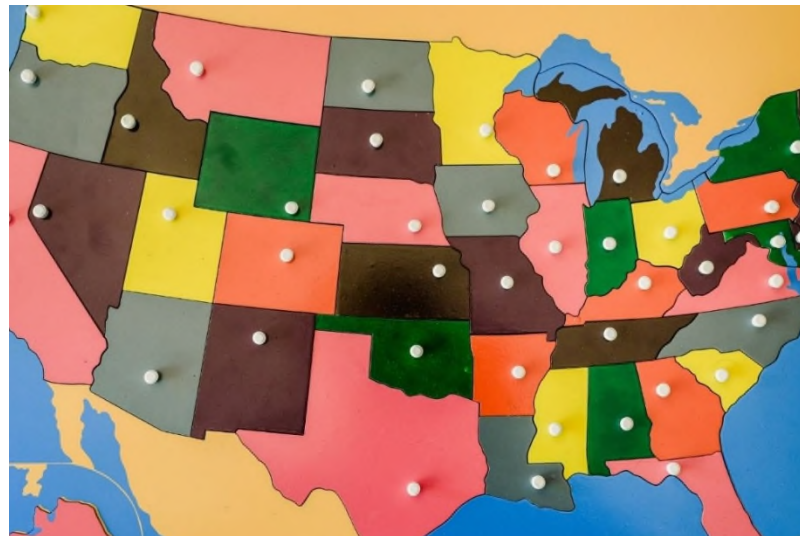
<sup>1</sup> OSHA is requiring medical removal protection benefits to be paid only by employers that have more than 10 employees.

<sup>2</sup> Employers may choose to remove or test employees for other COVID-19-related reasons not required by the ETS (e.g., additional symptoms from the CDC list or exposure to someone who is COVID-19 positive outside the workplace).

<sup>3</sup> This notification provision is not triggered by the presence of a patient with confirmed COVID-19 in a workplace where services are normally provided to suspected or confirmed COVID-19 patients (e.g., emergency rooms, urgent care facilities).

# State Plan States

- Twenty Two (22) OSHA-approved State Plan States must either
  1. revise their standards to be identical or “at least as effective as” OSHA’s; or
  2. show that an existing State standard is “at least as effective” as the OSHA’s.
- State Adoption Deadline: by 30 days from June 21.
- State Notification Deadline: within 15 days.



# Mini-Respirator Program

- Key Requirements of mini-respirator program
- Mini-Respirator Program vs. normal Respiratory Protection
  - Medical Evaluation
  - Fit Testing
  - Written Program
  - User Seal Checks
  - Training
- When must employers comply with the normal Respiratory Protection standard instead of the mini respiratory protection program?
- Can workers provide their own respirators?



# Training – the What

Employers must ensure that all employees receive training so they comprehend:

- COVID-19 transmission and steps to reduce risk
- tasks and situations in the workplace that could result in infection
- employer-specific policies and procedures
  - patient screening and management
  - to prevent the spread of COVID-19 that are applicable to the employee’s duties
  - cleaning and disinfecting
  - health screenings and medical management
  - multi-employer workplace agreements for infection control
  - use of PPE
- available sick leave policies and any COVID-19-related benefits
- identity of the safety coordinator(s) for the COVID-19 plan
- requirements of the ETS

# Training – the How

- The ETS allows for some flexibility in implementing the training program based on size and type of workplace.
  - May offer training in a variety of formats, including online, virtual, instructor-led, or application-based methods
- ***But*** must ensure that employees comprehend the training materials ***and that they have an opportunity to get answers to their questions.***
- Different ways to ensure comprehension of training materials:
  - a knowledge check (e.g., written or oral assessment)
  - discussion after the training
  - Post-training assessments, especially when offering online training
- Training must be overseen by person knowledgeable in the subject matter
- Provide employee additional training when there are changes affecting employee's risk of contracting COVID-19 or indication employee did not retain prior training

# Training – the How

- Employers must provide training in a language and at a literacy level the employee understands.
  - the employer must ensure all training materials are presented in a way that each employee can understand, even if employees speak different languages and have different educational levels
  - may require creating different training materials for different groups of employees (e.g., materials in different languages).
    - When translation of training materials is required, employers must ensure the translation is one the employees can clearly understand.
- Employers may rely on training completed prior to the effective date of the ETS *to the extent that it meets the relevant training requirements.*

# Example

## Instructor Guidelines

- This is a sample presentation developed by OSHA that employers or other instructors may customize and use to train their employees according to the requirements of OSHA's COVID-19 Healthcare Emergency Temporary Standard (ETS, 29 CFR 1910.502).
- Employers and other instructors should review and customize this presentation, particularly the areas marked with blue text, to meet their specific training needs. Examples of ways to customize are:
  - Add workplace-specific COVID-19 hazards associated with specific job tasks, as well as the controls being implemented in the workplace to address these hazards.
  - Add workplace-specific policies and procedures to prevent the spread of COVID-19.
  - Remove information that does not pertain to their workplace.
- The training **MUST**:
  - Be provided to each employee in a language and literacy level they understand.
  - Be overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the employee's job duties.
  - Allow employees an opportunity for interactive questions and answers.
- This presentation can be projected, printed as handouts, or both.
- Employers must ensure that employees comprehend the training materials (e.g., knowledge check, discussion after the training, etc.)
- Note that employers may rely on training completed prior to the effective date of the ETS to the extent that it meets the training requirements of paragraph (n) of the ETS.

This document is intended to provide information about the COVID-19 Emergency Temporary Standard. The Occupational Safety and Health Act requires employers to comply with safety and health standards promulgated by OSHA or by a state with an OSHA-approved state plan. However, this document is not itself a standard or regulation, and it creates no new legal obligations.

# Recordkeeping Requirements

- Employers with more than 10 employees must:
  - retain all versions of the COVID-19 plan implemented to comply with the ETS
  - establish and maintain a COVID-19 log to record each instance where an employee is COVID-19 positive
  - make available to employees and their representatives the above documents
- Small employers (10 or fewer employees) do not have to comply with retention, COVID-19 log, and availability requirements





# COVID-19 Log

- Employers must keep a COVID-19 log
  - Record each instance identified by the employer where an employee is COVID-19 positive *regardless of whether the instance is connected to exposure at work*
- COVID-19 log must be completed **within 24 hours** of employer learning that employee is COVID-19 positive
  - Don't include instances of COVID-19 positivity of employees who work exclusively from home
- COVID-19 log must be maintained as though it is a confidential medical record
  - cannot be disclosed except as required by ETS or other federal law
- COVID-19 log must be maintained and preserved while ETS is in effect
- The COVID-19 Log does **not** eliminate the obligation to record all *work-related* confirmed cases of COVID-19 under the OSHA 300 Log (29 CFR part 1904).

# COVID-19 Log - Content

- Required contents of COVID-19 log:
  - employee's name,
  - one form of contact information,
  - occupation,
  - location where employee worked,
  - date of employee's last day at the workplace,
  - date of the positive test for, or diagnosis of, COVID-19, and
  - date the employee first had 1 or more COVID-19 symptoms (if any)



# Example:

## COVID-19 Log

The OSHA COVID-19 Healthcare Emergency Temporary Standard (ETS) requires employers to keep a COVID-19 Log if they have more than 10 employees on June 21, 2021 (the effective date of the ETS) (See 29 CFR 1910.502(q)). Employers are required to record on the COVID-19 Log each instance of an employee being confirmed COVID-19 positive (i.e., case that tested positive or was diagnosed by a licensed healthcare provider), whether it was contracted at work or elsewhere.

(Employers may use this form or any other form containing similar information)

**Name of Business/Employer:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Name and Contact information of Employer's Contact Person:** \_\_\_\_\_

Employee Name and Occupation (Job Title)	Employee Contact Information (Address, Phone Number, or email address)	Employee Work Location (Address, Department, Floors, or Room Numbers)	Most Recent Day the Employee Was Present in the Workplace (Date)	Date of COVID-19 Diagnosis or Positive Test for COVID-19	Date of Onset of Symptoms (If Applicable)	Brief Description or Additional Information

# Availability of Records

- Employers must provide, for examination and copying:
  - All versions of the written COVID-19 plan to current and former employees, their personal representatives, and their authorized representatives
  - The individual COVID-19 log entry for a particular employee to that employee and to anyone having written authorization from that employee
  - Redacted version of the COVID-19 log current and former employees, their personal representatives, and their authorized representatives
    - remove employee names, contact information and occupation
  - All records required by the ETS to OSHA
- Timing - *by the end of the next business day after a request*

# OSHA Reporting Requirements

- Employers must report to OSHA
  - each work-related COVID-19 fatality *within 8 hours* of the employer learning of the fatality.
  - each work-related COVID-19 in-patient hospitalization *within 24 hours* of the employer learning about the hospitalization

## Employers can report COVID-19 fatalities and in-patient hospitalizations by:

- Calling the OSHA Area Office that is nearest to the site of the incident (see [www.osha.gov/contactus/bystate](http://www.osha.gov/contactus/bystate));
- Calling the OSHA toll-free telephone number, 1-800-321-OSHA (1-800-321-6742); or
- Submitting information through OSHA's website at [www.osha.gov](http://www.osha.gov).

# What's Really New For Healthcare Employers?

- Hazard Assessment with non-management input or addressed the hazards in the required manner.
- Mini Respirator Protection Program
- Paid Leave Requirement
- Recordkeeping
- Reporting Obligations
- Training



# OSHA Penalty

## OSHA Penalties

Below are the maximum penalty amounts, with the annual adjustment for inflation, that may be assessed after Jan. 15, 2021. (See [OSHA Memo, Jan 8, 2021](#)).

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,653 per violation
Failure to Abate	\$13,653 per day beyond the abatement date
Willful or Repeated	\$136,532 per violation

## State Plan States

States that operate their own [Occupational Safety and Health Plans](#) are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's.

# Questions?

