State of Alaska
Department of Labor and Workforce Development
Division of Labor Standards and Safety

AKOSH Program Directive No. 22-04

Date: November 16, 2022

To: All AKOSH Staff

From: Tanya Keith, *Acting* Director PK

Subject: Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)

This Program Directive, PD 22-04, is formal notice that the Alaska Department of Labor and Workforce Development, Division of Labor Standards and Safety recognizes and will implement 29 CFR 1910.502(q), Recordkeeping regarding COVID-19 for healthcare employers with 10 or more employees.

This instruction is effective immediately. Please ensure that all members of your staff receive a copy of this program directive and understand how to implement it.

Attachment: Recordkeeping section of Interim final rule

cc: Jack Rector, Acting Regional Administrator, OSHA, Region X
Abby Lopez, Assistant Regional Administrator, OSHA, Region X
Arlene Lamont, Anchorage Area Director, OSHA Region X

instead of a required facemask. In this circumstance, when an employee provides and uses their own respirator, the employer is not obligated to pay the employee for the cost of procuring or maintaining the respirator. OSHA believes it is reasonable for the employee to assume responsibility for the cost of the respirator in this circumstance because the employee is choosing to wear PPE that is more protective than what is required under the standard. The employer must provide the protections required by the standard at no cost to employees, but is not obligated to pay for protections beyond those required, or for alternatives chosen by the employee.

Paragraph (l)(1)(i) requires the employer to screen each employee before each work day and each shift. The provision allows for employee self-monitoring as well as screening in-person by the employer. Where employers elect to conduct screening by having employees self-monitor before reporting to work, the standard does not require them to compensate employees for any incidental costs they incur (*e.g.,* the time needed to respond to a questionnaire).

Paragraph (l)(1)(ii) explicitly indicates that any COVID–19 test required by the employer for screening purposes must be provided at no cost to the employee. If a test is covered and paid for by an employee's employer-provided health insurance, and the employee does not incur any other expenses (*e.g.,* leave time), the test has been provided at no cost to the employee. Similarly, any COVID–19 test provided under paragraph (l)(4)(ii)(B) must be provided free of cost to the employee. If testing under either of these provisions requires travel by the employee, the employer is required to bear the cost of travel (*e.g.,* mileage for personal vehicle use, public transportation fare), and the employee must be paid at their regular rate of pay for time spent receiving the test, including travel time.

Paragraph (m) requires that employers support COVID–19 vaccination through reasonable time and paid leave for its employees. Paragraph (m) requires employers to cover the time off needed for full vaccination and for recovery from vaccine side effects, through provision of paid leave to all employees who decide to get vaccinated, resulting in the requirements of the standard being provided at no cost to employees (transportation costs are not required to be covered by employers).

Paragraph (n) requires the employer to ensure that each employee receives training, in a language and at a literacy level the employee understands, so that the employee comprehends specified elements regarding COVID–19, associated hazards in the workplace, the measures in place to protect employees from those hazards, and other specified topics. Employers must provide this 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 an 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. Any training or other communications provided under paragraph (o)(1), which requires employers to inform each of their employees about certain anti-retaliation-related topics, must similarly be provided at no cost to employees.

P. Recordkeeping

Section 8(c)(1) of the Act requires employers to ''make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.'' Section 8(c)(2) of the Act specifically directs the Secretary of Labor to promulgate regulations requiring employers to maintain accurate records of work-related injuries and illnesses. Section 8(c)(3) of the Act requires employers to ''maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6 [of the Act.]'' In accordance with section 8(c), and after consultation with HHS, OSHA has included recordkeeping requirements in paragraph (q). This paragraph includes requirements for the creation, maintenance, and availability of certain COVID–19-related records, including the retention of the COVID–19 plan required by paragraph (c), the establishment and maintenance of a COVID–19 log, as well as the availability of records to employees, employee representatives, and OSHA.

Although the Act provides OSHA with authority to require all employers covered by OSHA to keep records, one major class of employers is not required to keep records under paragraph (q). Paragraph (q)(1) provides that small employers with 10 or fewer employees on the effective date of this section are not required to comply with the recordkeeping provisions in paragraph (q)(2) or (q)(3). The approach to the scope in this section is generally consistent with the partial exemption in 29 CFR 1904.1, which provides that an employer in any industry with 10 or fewer employees at all times during the last calendar year is not required to maintain OSHA records of occupational injuries and illnesses during the current year unless required to do so in writing by OSHA.

The size exemption in paragraph (q)(1) is based on the total number of employees in a firm, rather than the number of employees at a particular location or establishment. An exemption based on individual establishments would be difficult to administer, especially in cases where an individual employee, such as a physician or nurse, regularly reports to work at several establishments. Under the 10-or-fewer employee exception in this paragraph, OSHA expects, based on the agency's analysis of healthcare employers as part of its economic analysis, that approximately 70% of healthcare employers potentially covered by this ETS would not be required to maintain records required under paragraph (q)(2) or make such records available under paragraph (q)(3) of this section.

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. Another example of individuals who are not considered to be employees under the OSH Act are unpaid volunteers (see 66 FR 5916, 6038).

Additionally, OSHA's regulation at 29 CFR 1904.2 partially exempts certain lower-hazard industry groups from the requirement for keeping occupational injury and illness records. However, the partial exemption in 29 CFR 1904.2 does not apply to the recordkeeping requirements in paragraph (q) of this section. All covered employers, even those that are partially-exempt under OSHA's recordkeeping regulation, must comply with the recordkeeping requirements in this paragraph if they have more than 10 employees on the effective date of this section. Also, although exempted from maintaining records under paragraph (q) of this section, employers with 10 or fewer

employees are required to report to OSHA each work-related COVID–19 fatality and in-patient hospitalization as required by paragraph (r) of this section.

Paragraph (c)(6) requires employers to monitor each workplace to ensure the ongoing effectiveness of the COVID–19 plan and update it as needed. Employers may also revise an original plan and implement an updated plan due to the evolving nature of the COVID public health emergency. Paragraph (q)(2)(i) requires covered employers to retain all versions of the COVID–19 plans implemented to comply with this ETS while the ETS remains in effect. As discussed in more detail below, the retention of the finalized, implemented COVID–19 plans (not drafts) will aid employers, employees, and employee representatives in several ways, including assisting with the evaluation of the efficacy of policies and procedures employers have taken iteratively in response to changing circumstances. As discussed above, paragraph (c) requires employers with more than 10 employees to develop, implement, and update a written COVID–19 plan for each workplace. Since paragraph (c) requires employers to update their written COVID–19 plan as needed, paragraph (q)(2)(i) requires employers to retain all versions of the plan while this ETS is in effect.

One of the main purposes for the retention requirement is to provide employees, former employees, and their representatives with access to the written plan. As discussed below, paragraph (q)(3)(i) requires employers to provide access to employees and employee representatives to all versions of the written COVID–19 plan.[139] OSHA believes that access to the plan will not only inform employees about the contents of the document, but will also lead to increased employee involvement in the development and updating of the plan. In addition, OSHA believes retention of all versions of the plan will ultimately assist employers in the prevention of COVID–19 exposure in their workplaces. Retention of all versions of the plan will enable employers to better evaluate the effectiveness of policies and procedures they have taken to limit exposure to COVID–19 and will ensure that employees and their representatives can provide meaningful contributions to the review and improvement of the COVID–19 plan. Additionally, making all versions of the plan available to OSHA (as required by paragraph (q)(3)(iv)) will allow the agency to verify the effectiveness of employee protections.

Under paragraph (q)(2)(ii), employers with more than 10 employees on the effective date of this section are required to establish and maintain a COVID–19 log and record each instance identified by the employer in which an employee is ''COVID–19-positive,'' meaning that person has a confirmed positive test for, or has been diagnosed by a licensed healthcare provider with, COVID–19, *regardless of whether the instance is connected to exposure to COVID–19 at work.* 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. As explained in a Note to paragraph (q)(2)(ii), the COVID–19 log is intended to assist employers with tracking and evaluating instances of employees who are COVID–19-positive without regard to whether those employees were infected at work. While the workplace is immediately impacted by having a COVID–19-positive employee because of the potential exposure to others, it can often be difficult to determine quickly whether that employee was infected at work or elsewhere, so OSHA has relieved employers of the burden of trying to make that determination for the COVID–19 log. Because of the need to quickly identify and track potential workplace exposure trends and inform others in the workplace about potential exposures, as well as implement other requirements of the standard (*i.e.,* medical removal from the workplace), it is more urgent to record an instance where an employee is COVID–19-positive and the details surrounding that instance than to wait to determine whether the instance was work-related. OSHA believes that the requirement to establish and maintain a COVID–19 log will ultimately assist employers in preventing workplace transmission, even when cases arise that do not originate in the work environment.

Paragraph (q)(2)(ii)(A) provides that the COVID–19 log must contain, for each instance, the employee's name, one form of contact information (*e.g.,* phone number or email address), 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. When making entries on the COVID–19 log, employers should only enter the specific information required to be entered. The recording of additional information (not required to be entered) may result in privacy concerns for the employee who is the subject of the entry.

The main purpose of the COVID–19 log is to assist employers in tracking whether there is a COVID–19 outbreak at the worksite. Information about specific occupations and locations where employees have worked can be used to pinpoint where exposure has occurred. For example, if the occupation of the infected employee is ''healthcare assistant'', the location is ''floors 3 through 5'', and those floors consist mainly of patient examination and hospital rooms, the employer may be able to conclude that the employee had spent time working with other health care providers in rooms on those floors and may be able to determine what times exposures in each place would have occurred based on other patient and provider records.

Also, entering information on the COVID–19 log about an employee with non-work-related COVID–19 illness assists an employer in tracking how and when the disease entered the workplace. By entering information about all employee cases of COVID–19, the time needed by employers to make work-relatedness determinations is eliminated, and thus results in information being entered on the COVID–19 log in a timely manner. In addition, the information entered on the log may assist an employer in determining whether the employer's policies and procedures have been effective in the prevention of COVID–19 in their workplace.

Additionally, paragraph (q)(2)(ii)(B) requires employers to make entries on the COVID–19 log within 24 hours of learning that an employee is COVID–19-positive. The 24-hour timeframe ensures that information about an employee's confirmed or diagnosed illness is timely entered on the COVID–19 log. At some worksites, timely information entered on the COVID–19 log may assist employees and their representatives, who have a right of access to certain information on the log, in preventing the spread of the disease throughout a facility. Specifically, the timely entry of COVID–19 illness information on the log may assist employee representatives in identifying exposure trends in different areas of a workplace.

[139] Consistent with 29 CFR part 1904.35(a)(3), OSHA interprets the term ''employee'' as used in paragraph (q)(3)(i)–(iii) to include former employees. In accordance with this interpretation, OSHA also interprets the phrases ''their personal representatives'' and ''their authorized representatives,'' as used in paragraph (q)(3)(i) and (q)(3)(iii), to include the personal and authorized representatives of former employees. These interpretations are limited to these provisions. Note, as discussed in more detail below, that for former employees and their representatives, the requirement to provide access to the written COVID–19 plan under paragraph (q)(3)(i) is limited to the versions of the plan that were implemented during the former employees' employment.

The COVID–19 log required by the ETS differs from the OSHA 300 log that employers are required to maintain under the OSHA injury and illness recordkeeping regulation at 29 CFR part 1904. Most importantly, under 29 CFR part 1904, employers are required to make several determinations regarding the recordability of specific injuries and illnesses before information is entered on the 300 log. For example, employers are not required to record non-work-related illnesses and injuries on their OSHA 300 logs. Therefore, in order to determine whether to record COVID–19 illness on the OSHA 300 log, employers must determine whether the illness is work-related. Under paragraph (q)(2)(ii), employers are required to enter information on the COVID–19 log regardless of whether an employee's illness is the result of a work-related exposure. Also, under 29 CFR part 1904, employers must generally provide access to the 300 log to employees, former employees, and their representatives with the names of injured or ill employees included on the form. By contrast, employers must maintain the COVID–19 log as though it is a confidential medical record and must not disclose it except when providing access as required by paragraph (q)(3), or other federal law. As a result, while some COVID–19 illnesses may qualify for entry on both logs, the OSHA 300 log may not be used as a substitute for the COVID–19 log required by this section.

Finally, as explained in a Note to paragraph (q), employers must continue to record all work-related confirmed cases of COVID–19 on their OSHA Forms 300, 300A, and 301, or on equivalent forms, if required to do so under 29 CFR part 1904. The recordkeeping regulation at 29 CFR part 1904 includes additional requirements for the recording of work-related COVID–19 illness from this ETS. Under 29 CFR part 1904, COVID–19 is a recordable illness and employers are responsible for recording cases of COVID–19 if: (1) The case is a confirmed case of COVID–19 as defined by the Centers for Disease Control and Prevention (CDC); (2) the case is work-related as defined by 29 CFR 1904.5; and (3) the case involves one or more of the general recording criteria in set forth in 29 CFR 1904.7 (*e.g.,* medical treatment beyond first aid, days away from work).

Paragraph (q)(2)(ii)(B) also requires that the information in the COVID–19 log be maintained as though it is a confidential medical record and must not be disclosed except as required by this ETS or other federal law. OSHA historically has recognized that occupational safety and health records maintained by employers may contain information of a sufficiently intimate and personal nature that a reasonable person would wish to remain confidential. While the entries of information on the COVID–19 log may be brief, they may contain information that could result in a serious confidentiality or privacy concern if disclosed to other employees, former employees, or their representatives. Accordingly, under this section, the disclosure of personal information entered on the COVID–19 log is limited to the access provisions set forth in paragraph (q)(3), or as required by other federal laws. Otherwise, employers must maintain the log as though it is a confidential medical record.[140]

One of the major federal regulations addressing the privacy of individuals' health information is the U.S. Department of Health and Human Services (HHS) regulations at 45 CFR parts 160 and 164, known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) ''Privacy Rule.'' The Privacy Rule protects the privacy of individually identifiable health information (referred to as ''protected health information'' or ''PHI'') maintained or transmitted by HIPAA-covered entities [141] and their business associates. The Privacy Rule is also balanced to ensure that appropriate uses and disclosures of PHI can be made when necessary to treat a patient, to protect the nation's public health, and for other important purposes. A covered entity may not use or disclose PHI except as permitted or required by the Privacy Rule (see 45 CFR part 164.502).

The term ''covered entity'' includes health plans, health care clearing houses, and health care providers who transmit health information in electronic form. For OSHA purposes, this mainly refers to a health care provider, defined in the Privacy Rule as any person or organization that furnishes, bills, or is paid for health care in the normal course of business.

The HIPAA Privacy Rule excludes certain individually identifiable health information from the definition of PHI. For example, employment records held by a covered entity in its role as an employer are not PHI and the HIPAA Privacy Rule would not affect the disclosure of health information contained in employment records to OSHA (see 45 CFR part 160.103).

With respect to disclosures of PHI made by covered entities directly to OSHA, the agency notes that the Privacy Rule specifically permits disclosures of PHI without an individual's authorization for certain purposes. Of particular significance is 45 CFR part 164.512, ''Uses and disclosures for which an authorization or opportunity to agree or object is not required.'' These standards do not compel a covered entity to disclose PHI. Instead, they permit the covered entity to make the requested disclosure without obtaining authorization from the individuals who are the subjects of the PHI. Section 164.512(a) of the Privacy Rule permits covered entities to use and disclose PHI, without an individual's authorization, when they are required to do so by another law. HHS has made clear that this provision encompasses an array of binding legal authorities, including statutes, agency orders, regulations, or other federal, state, or local governmental actions having the effect of law (see 65 FR 82668). As a result, the Privacy Rule, in and of itself, generally does not provide a justification for a covered entity to refuse to disclose PHI to OSHA as required by an OSHA standard or regulation. Based on its finding that the ETS is necessary to address the grave danger that the SARS–CoV–2 virus presents to workers, OSHA further finds that the COVID–19 log is critical to convey the specified information in a timely manner that is critical for worker protection.

A covered entity may also disclose PHI without an individual's authorization to ''public health authorities'' and to ''health oversight agencies'' (see 45 CFR parts 164.512(b) and (d)). The preamble to the Privacy Rule issued in 2000 specifically mentions OSHA as an example of both

[140] Please note that the employer is still required to enter work-related COVID–19 cases on the 300 log pursuant to 29 CFR part 1904 and must provide access to them under 29 CFR part 1904.35(b)(2)(iv). However, employees do have the right to ask employers to record their injury or illness on the 300 log as a ''privacy concern case.'' In such a case, employers do not enter the employee's name on the 300 log. Instead, the employer enters ''privacy case'' in the space normally used for the employee's name. Per 29 CFR part 1904.29(b)(6), the employer would then keep a separate, confidential list of the case numbers and employee names for their privacy concern cases so they can update the cases and provide the information to the government if asked to do so (see 29 CFR part 1904.29(b)(6)–(9)). Also, 29 CFR part 1904.29(b)(9) provides that, even after the employee's name has been removed, if an employer has a reasonable basis to believe that the information describing a privacy concern case may identify the employee, the employer may use discretion in describing the case on the OSHA recordkeeping forms to protect the identity of the employee while still accomplishing the purpose of keeping the record.

[141] ''Covered entities'' are health plans, health care clearinghouses, and health care providers who conduct certain standard transactions electronically (see 45 CFR 160.103).

(see 65 FR 82492, 82526). Accordingly, while employers must maintain the COVID–19 log in a manner consistent with federal and state privacy requirements, they generally may not refuse to disclose PHI when required or requested by OSHA based solely on the provisions of the Privacy Rule. Also, because paragraph (q)(3) of this ETS includes a specific, legally enforceable right of access, the Privacy Rule permits employers to disclose certain PHI to employees, former employees, and their representatives, to the extent the disclosure is ''required by law'' (and must do so as required by the ETS).

Paragraph (q)(2)(ii)(C) provides that the COVID–19 log must be maintained and preserved while this section remains in effect. The purpose of this retention requirement is twofold. First, retention of the log allows employers to review previously entered information over a long period of time. This can be useful to determine which policies and procedures at a workplace have been effective in reducing occupational exposure to COVID–19. Second, retention of the log allows for access of the entered information by employees, former employees, and their representatives, and OSHA, which can facilitate tracing of potential exposures at a particular worksite and at other worksites where infected employees may have traveled.

The maintenance requirement in paragraph (q)(2)(ii)(C) does not specify a particular method by which employers must maintain the log. Employers have flexibility in choosing a method for maintaining the information on the log. In making these decisions, employers should consider using a method that gives them the ability to effectively enter, update, and retain the information on the log while this section remains in effect, and ensures that the entered information is both accurate and secured. Also, employers should use a method that can allow for transmission of data when employees, former employees, and their representatives, and OSHA, request access to information under paragraph (q)(3), especially when information is maintained at a centralized location.

For purposes of centralized recordkeeping, the COVID–19 log may be maintained at a location other than the establishment, such as a company's central office. Employers with several distinct establishments or workplaces may keep several versions of the log at a centralized location. However, if the COVID–19 log(s) is maintained at a central location, the employer must ensure that the information on the log can be accessed by employees, employee representatives, and OSHA at the relevant worksite in accordance with the requirements of the ETS.

Finally, if a business changes ownership while the ETS is in effect, the selling employer is responsible for transferring information on the COVID–19 log to the new owner. Under these circumstances, the previous owner is responsible for transferring all of the information entered on the COVID–19 log to the new owner, and the new employer becomes responsible for retaining that COVID–19 log. This will help ensure that the new employer is aware of previously entered COVID–19 exposure information, and that employees and their representatives who remain after the sale, as well as former employees and their representatives, will have continued access to all of the COVID–19 log information at their workplace or former workplace.

Paragraph (q)(3) includes requirements for the access, upon request, by employees, former employees, and their representatives to records retained or maintained by employers under paragraph (q). In addition, paragraph (q)(3) includes requirements for records access for the Assistant Secretary. One of the goals of the access requirements is to enhance employee involvement in the process for preventing COVID–19 exposure in the workplace. OSHA believes employee access to information about COVID–19 is an essential part of an effective COVID–19 plan. When employees do not have access to accurate information about hazards they face in their workplace, the likelihood increases that employees may suffer occupational injuries and illnesses. This would mean, for purposes of COVID–19, that employers and employees would not have information they need to prevent the outbreak and spread of the virus in their workplace.

Paragraph (q)(3) specifies that the employer must provide the records specified in paragraph (q)(3)(i)–(iv) to the specified individuals for examination and copying by the end of the next business day after a request. By requiring prompt production of these records, the provision ensures that requesters, who are limited to employees and their representatives, can have the information necessary to take an active role in their employers' efforts to prevent COVID–19 exposure in the workplace.

Paragraph (q)(3)(i)–(iv) provides more details about which records the employers must provide access to and to whom that access must be provided. Paragraph (q)(3)(i)–(iii) focuses on records access for employees and their representatives. As noted above, and consistent with 29 CFR 1904.35(a)(3), OSHA interprets the term ''employee'' as used in paragraph (q)(3)(i)–(iii) to include former employees. In accordance with this interpretation, OSHA also interprets the phrases ''their personal representatives'' and ''their authorized representatives,'' as used in paragraphs (q)(3)(i) and (iii), to include the personal and authorized representatives of former employees. These interpretations are limited to these provisions.

In addition, for purposes of paragraph (q)(3), the term ''representative'' is intended to have the same meanings as in 29 CFR 1904.35(b)(2), which encompasses two types of employee representatives. The first is a personal representative of the employee or former employee, who is a person the employee or former employee designates, in writing, as his or her personal representative, or is a legal representative of a diseased or legally incapacitated employee or former employee. The second is an authorized representative, which is defined as an authorized collective bargaining agent of one or more employees working at the employer's worksite. Authorized representatives do not require separate written authorization to access the version of the COVID–19 log described in paragraph (q)(3)(iii) because they have received broad authorization (see below for more details regarding this version of the log).

Under paragraph (q)(3)(i)–(iii), employees, former employees, and their representatives have three specific access rights. First, pursuant to paragraph (q)(3)(i), employees and their representatives have access to all versions of the written COVID–19 plan at any workplace where the employee or former employee has worked. Second, pursuant to paragraph (q)(3)(ii), any employee, former employee, and anyone having written consent of that employee or former employee have access to the COVID–19 log entry for that employee or former employee. Finally, under paragraph (q)(3)(iii), employees, former employees, and their representatives have a right to access a version of the COVID–19 log that removes the names of employees, contact information, and occupation, and only includes, for each employee in the COVID–19 log, the location where the employee worked,[142]

[142] The employer should use discretion when possible. This location should be specific enough to accomplish the purpose of this recordkeeping in alerting people where the COVID–19 hazard was located, but avoid the level of specificity that might

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the last day that the employee was at the workplace before removal, the date of that employee's 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. As noted above, the employer must provide these records to these individuals upon request for examination and copying not later than by the end of the next business day after the request.

Employee, and employee representative, access to this information is critical to ensuring full employee participation in employer efforts to prevent COVID–19 exposure in the workplace. For example, access to the COVID–19 log may be helpful for a requesting employee in determining the likelihood of COVID–19 exposure in specific occupations or areas at a workplace. Also, access to information by employee representatives allows them to potentially evaluate exposure information for the employees they represent in different areas throughout a worksite. In addition, access to the information on the COVID–19 log provides a useful check on the accuracy of information entered by the employer and provides greater employee involvement in the COVID–19 protection program at the workplace.

Former employee access to these records is important as well. OSHA finds that the needs of former employees for access to records that could speak to their health are as compelling as the needs of current employees. Therefore, as noted above, OSHA interprets the term ''employee'' as used in paragraph (q)(3)(i)–(iii) to provide records access to former employees and their representatives. Employers should note, however, that they may limit the access of a former employee and their representatives to versions of the written COVID–19 plan and the COVID–19 log that were current or otherwise relevant to the former employee's time of employment. In other words, as to the requirement in paragraph (q)(3)(i) to provide all versions of the written COVID–19 plan to former employees and their representatives, employers need only provide the versions of the plan that were implemented during the former employees' employment. Similarly, as to the requirement in paragraph (q)(3)(iii) to provide the version of the COVID–19 log that removes the names of employees, contact information, and occupation, and only includes, for each employee in the COVID–19 log, the location where the employee worked, the last day that the employee was at the workplace before removal, the date of that employee's 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, to former employees and their representatives, employers are only required to provide log entries for dates on which the former employee was employed by the employer.

Employers should note that employee privacy is protected under the access to records provisions in paragraph (q)(3). Unlike the OSHA 300 log, employers are not permitted to disclose the names of employees or occupations entered on the COVID–19 log when they provide the COVID–19 log to employees, former employees, or their representatives for copying under paragraph (q)(3)(iii). However, paragraph (q)(3)(ii) does allow a limited exception to this privacy requirement. Specifically, as noted above, upon request, employers must provide access to the COVID–19 log entry for an individual employee or former employee to that employee or former employee, or to anyone having that employee or former employee's written permission. Consequently, employees, former employees, their representatives, and others can request and receive access to entries about another employee or former employee with that employee or former employee's written permission.

In order to create the version of the COVID–19 log that would be provided under paragraph (q)(3)(iii), an employer must remove the names, contact information, and occupation of employees. Other information on the COVID–19 log relating to the location where the employee worked, the last day the employee was at the workplace before removal, the date of the employee's positive test for, or diagnosis of, COVID–19, and the date the employee first had COVID–19 symptoms, if any were experienced, must be included in the privacy-protected log. This information is critical for employees and their representatives to assess potential exposures to COVID–19 in the workplace and is the only information that may be included on the version of the log provided to employees and representatives under paragraph (q)(3)(iii). Without the provision of this information to employees and their representatives, the only potential check on whether the employer is accurately complying with the notification requirements of the ETS would be OSHA inspections. The agency believes that making this information available to employee representatives in a manner that still addresses privacy concerns will help ensure compliance with the requirements of the ETS and thereby protect workers.

In addition, as noted above, paragraph (q)(2)(ii)(B) provides that the information in the COVID–19 log must be maintained as though it is a confidential medical record and must not be disclosed except as required by this ETS or other federal law. These provisions work together to take steps to preserve employee privacy and confidentiality.

Under the ETS, employees, former employees, and their representatives are entitled to one free copy of each requested record, which is consistent with 29 CFR 1904.35. The cost of providing one free copy to employees, former employees, and/or their representatives is minimal, and these individuals are more likely to access the records if it is without cost. Allowing the employer to charge for a copy of the record would only delay the production of the information. After receiving an initial, free copy of a requested record or document, an employee, former employee, or representative may be charged a reasonable fee for copying duplicative records. However, no fee may be charged for an update to a previously requested record.

Lastly, paragraph (q)(3)(iv) provides OSHA with a specific right of access. Under this paragraph, employers must provide OSHA with access to the records required to be created and maintained by this section. This means that employers must allow OSHA representatives to examine and copy all versions of the COVID–19 written plan, as well as all information entered on the COVID–19 log, when the OSHA representative asks for the records during a workplace safety and health inspection. OSHA does not believe that its inspectors need to obtain employee permission to access and review personally-identifiable information entered on the COVID–19 log. Gaining this permission would essentially make it impossible to obtain full access to the log in a timely manner, which is needed by OSHA to perform a meaningful workplace investigation. Also, without complete access to the information entered on the log, Agency efforts to conduct immediate intervention or remediation of COVID–19 exposure at a specific workplace would be limited. Finally, OSHA representatives need

reveal the employee's identity unnecessarily. In some cases, such as when only a single employee works in a location, it will be infeasible to avoid alerting others to the employee's identity. But in other cases, instead of saying that employee worked at a particular piece of equipment or in a particular portion of a room, the employer could just identify the room where the employee was.