

Welcome

NEXT STEPS: OSHA'S VACCINE OR TEST RULE FOR EMPLOYERS

Thursday, December 2 | 8:30 - 9:30 AM

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Next Steps: OSHA's Vaccine or Test Rule for Employers



OSHA[®]

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Today's Presenter



Cindy Lawrence,
Human Resources Consultant
Compliance Officer



Next Steps: OSHA's Vaccine or Test Rule for Employers

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OSHA's Vaccination ETS Now What?

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The Emergency Temporary Standard Timeline

- ▶ Sept. 9, 2021: Pres. Biden directs DOL to develop an ETS mandating COVID-19 vaccinations or testing at all companies with 100+ employees
- ▶ Nov. 4, 2021: OSHA files the ETS with the federal register, where it is published Nov. 5th
- ▶ Legal challenges filed within days
 - ▶ U.S. Court of Appeals - 5th Circuit issues a temporary stay while they consider the enforceability of the mandate
 - ▶ The Justice department challenges the 5th Circuit's stay
 - ▶ The 5th Circuit upholds the stay
 - ▶ Lawsuits filed in the Courts of Appeals in the Fifth, Sixth, Seventh, Eighth, Eleventh, and D.C. Circuits are consolidated into 1 case to be heard by the U.S. Court of Appeals - 6th Circuit at a future date not yet announced
 - ▶ OSHA acknowledges the stay, announcing it is suspending “activities related to the implementation and enforcement of the ETS pending future developments in the litigation”
- ▶ Legality of the ETS will most likely be determined by the U.S. Supreme Court

How to Proceed?

- ▶ If the OSHA ETS is upheld, employers should be ready to move forward
- ▶ Initial guidance regarding who is covered
 - ▶ Employers must count both full-time and part-time employees across all U.S. locations, regardless of where the employee performs his or her work. Even if an employee works from home, he or she would still count towards the employer's total number of employees
 - ▶ An employer with 100 or more employees is subject to this ETS for the duration of the ETS even if its headcount falls below 100 employees
 - ▶ Employees who do not work where other individuals are present, employees who work from home, and employees who work exclusively outdoors are not required to comply with the ETS's provisions (though they do count for purposes of determining coverage under the ETS)
 - ▶ NOT Covered- Workplaces where employees provide healthcare services, including workplaces covered under the Centers for Medicare & Medicaid Services' Interim Final Rule, and workplaces that provide healthcare support services subject to OSHA's June 10, 2021 ETS are not required to comply with this ETS's provisions

What does the ETS require?

By Dec. 5th covered employers must:

- ▶ Develop, implement and enforce a mandatory COVID-19 vaccination policy, unless the employer is permitting employees to conduct weekly testing
- ▶ Provide all employees with information on:
 1. Your workplace policies and procedures in response to the ETS;
 2. COVID-19 testing and face covering requirements for unvaccinated employees;
 3. The CDC document, “Key Things to Know About COVID-19 Vaccines;”
 4. Information about protections against retaliation and discrimination; and
 5. Information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.
- ▶ Provide up to four (4) hours of paid leave for employees to receive each vaccination dose
- ▶ Provide a reasonable amount of paid sick leave, if needed, for employees to recover from vaccine side effects if they prevent the employee from working. Employers may require employees to use their accrued paid sick leave when recovering but must pay them if no accrued sick leave is available
- ▶ Set up a tracking mechanism for determining and obtaining proof of employee vaccination status
- ▶ Maintain a confidential and current employee roster with vaccination status

What does the ETS require?

By January 4, 2022, covered employers must ensure employees:

- ▶ Have the necessary shot(s) to be considered fully vaccinated

OR

- ▶ produce negative COVID-19 tests on at least a weekly basis
- ▶ Acceptable forms of proof of vaccination include:
 - ✓ A record of immunization from a healthcare provider or pharmacy
 - ✓ A copy of the COVID-19 Vaccination Record Card
 - ✓ A copy of medical records documenting the vaccination
 - ✓ A copy of immunization records from a public health, state, or tribal immunization information system,

or

- ✓ A copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of healthcare professional or clinic site administering the vaccine

What does the ETS require?

- ▶ Acceptable forms of proof of vaccination, con't.
 - ▶ An attestation may be acceptable if the employee is unable to produce acceptable proof of vaccination and if the employee signs and dates a statement
 - ✓ attesting to their vaccination status including the date of vaccination
 - ✓ stipulating that they have lost or are otherwise unable to provide proof,
- and*
- ✓ acknowledging that providing false information regarding vaccination status may subject the employee to criminal penalties
 - ✓ Employers that have previously collected attestations prior to the effective date do not need to re-verify or collect these attestations

Your Policy Should Include:

- ▶ Statement whether you will you require vaccinations or allow weekly testing opt-out and the wearing of a face mask in lieu of vaccination
- ▶ An exception and accommodation request process for those who are not able to receive a vaccination for medical reasons or due to a deeply held religious belief
- ▶ Date by which current employees must be fully vaccinated or begin weekly testing and timeframe for new hires
- ▶ What are acceptable forms of proof of vaccination
- ▶ How you will protect that information
- ▶ Your procedures for requesting paid time off to obtain vaccination
- ▶ Availability of paid sick time if side effects of the vaccination prohibit the employee from working

Your Policy Should Include:

- ▶ Procedure for employees on how and who to notify if they have tested positive for COVID-19 or have been diagnosed with COVID-19 by a licensed healthcare provider and your leave policies for such circumstance
- ▶ Your policy for keeping COVID-19 positive employees from the workplace and when they may return to work
- ▶ COVID-19 testing requirements for those who decline the vaccination
 - ▶ Those who decline getting vaccinated or are covered by an accommodation must be tested at a minimum once every 7 days and provide proof of a negative test to the employer
 - ▶ Tests must be FDA-approved and can't be both self-administered and self-read by the employee
 - ▶ Test results are medical records that must be handled confidentially
 - ▶ Employers are not required to pay for the testing, or to pay for the time away from work to be tested
 - ▶ Face coverings are required to be worn at all times in the workplace by those who are unvaccinated

Your Policy Should Include:

- ▶ How you will comply with ensuring each employee who is not fully vaccinated wears a face covering when indoors and when occupying a vehicle with another person for work purposes
- ▶ Disciplinary process if the policy is not followed
- ▶ Statement of confidentiality and privacy of all information collected in compliance with vaccination and testing requirements
- ▶ Statement ensuring no retaliation or discrimination will be permitted

Questions?

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Question and Answer

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Thank You

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