

EMPLOYMENT LAW UPDATE

OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard

On November 4, 2021, the federal Occupational Safety and Health Administration (“OSHA”) released the long-awaited COVID-19 Vaccination and Testing Emergency Temporary Standard (“[ETS](#)”), which will be published in the Federal Register tomorrow, November 5, 2021. The ETS applies to employers with 100 or more employees (including part-time employees) with three exceptions:

- (1) Workplaces covered by the Safer Federal Workforce Task Force COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors;
- (2) Settings where an employee provides healthcare services or healthcare support services covered by 29 C.F.R. §1910.502 (OSHA’s Healthcare ETS); and
- (3) Employees of covered employers who exclusively: (a) do not report to a workplace where others are present; (b) work remotely from home; or (c) work outdoors.

The ETS expressly states that it “preempt[s] inconsistent state and local requirements.”

OSHA has created an [ETS summary](#), which sets forth many of the key requirements, several of which are highlighted below. The ETS’s requirements take effect 30 days after being published in the Federal Register (**December 5, 2021**), with the exception of the weekly testing requirement, which takes effect 60 days after publication (**January 4, 2022**).

- ❖ **Workforce Vaccination Assessment:** Covered employers must assess their workforce to determine whether each employee is fully vaccinated, must obtain proof of vaccination from each employee, and must maintain a roster of each employee’s vaccination status.
- ❖ **COVID-19 Vaccination, Masking, and Testing Policy:** Covered employers must develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for establishing and enforcing a requirement that employees who are not fully vaccinated be tested weekly for COVID-19 and wear a face covering indoors or when occupying a vehicle with another person. Test results must be maintained and preserved by the employer and kept in the employee’s confidential medical file (separate from the employee’s personnel file).
- ❖ **Paid Time for Vaccination:** Covered employers are required to provide employees up to 4 hours of paid time off to receive each vaccination dose, as well as a “reasonable” amount of paid sick leave to recover from vaccination.

- ❖ **Cost of COVID-19 Testing:** Covered employers are not required to pay for the costs of the COVID-19 testing, unless required by a CBA or other law/regulation. Also, the ETS does not require employers to provide paid time off for the time spent testing.
- ❖ **Notification of Positive Test Result, Removal, and Isolation:** Covered employers must require employees to promptly provide notice of a positive COVID-19 test, must immediately remove the employee from the workplace, and must keep the employee out of the workplace until cleared to return pursuant to the ETS.
- ❖ **Information to Be Provided to Employees:** Covered employers must provide the following information to employees: (i) the [ETS fact sheet](#) and information about the employer's COVID-19 policy; (ii) the CDC's [Key Things to Know about the Vaccine](#); (iii) [workers' rights fact sheet](#) describing protections from discrimination and retaliation; and (iv) information about the [penalties](#) associated with providing false information and documentation.
- ❖ **OSHA Reporting:** Covered employers must report COVID-19 fatalities to OSHA within 8 hours of learning about them, and must report COVID-19 hospitalizations within 24 hours of learning about them.

Conclusion

We recommend that covered employers review the ETS and promptly begin implementing its requirements. A list of Frequently Asked Questions can be found [here](#).

***More Questions?
We are here to help.***

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Our benefits team would be glad to assist***

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