

LEGAL UPDATE

OSHA Releases Vaccination and Testing ETS

On Nov. 4, 2021, the Occupational Safety and Health Administration (OSHA) [announced](#) a [federal emergency temporary standard](#) (ETS) to address the grave danger of COVID-19 infection in the workplace. Affected employers will be required to comply with most provisions of the ETS by **Dec. 5, 2021**, and with its testing requirements by **Jan. 4, 2022**. Affected employers include private employers **with 100 or more employees** (firm- or company-wide count). State plans will have 30 days to adopt the federal ETS or implement their own vaccination standard.

ETS Requirements

The ETS requires employers to:

- Develop, implement and enforce a mandatory COVID-19 vaccination policy; or
- Create a policy allowing employees to choose to get a vaccination or wear a face covering in the workplace and have weekly COVID-19 testing done.

Employers must determine the vaccination status of each employee, obtain acceptable proof of vaccination and keep a roster of each employee's vaccinations status.

Weekly Testing Requirements

Employees who are not fully vaccinated must be tested weekly or within seven days before returning to work. The ETS does not require employers to pay for any costs associated with testing. However, employer payment for testing may be required by other laws, regulations, collective bargaining agreements or other collectively negotiated agreements.

Paid Leave

Employers are also required to allow reasonable time—including up to four hours of paid time—to receive a primary vaccination dose. Reasonable time and paid sick leave are also required to recover from any side effects of the vaccination. Employees are required to provide immediate notice of a positive COVID-19 test or diagnosis, and will be removed immediately from work until return to work criteria are met.

ETS Exemptions

The requirements of the ETS do not apply to:

- Employees who do not work with other individuals present;
- Employees when they are working from home;
- Employees who work exclusively outdoors;
- Those covered under the Safer Federal Workforce Task Force;
- Those covered by the health care ETS;
- Employers that have fewer than 100 employees; and
- Public employers in states without State plans.

Affected employers must develop, implement and enforce a mandatory COVID-19 vaccination policy.

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