

OSHA issues temporary emergency standard for Covid vaccination

The U.S. Department of Labor's Occupational Safety and Health Administration has announced a new Emergency Temporary Standard (ETS) to protect more than 84 million workers from the spread of the coronavirus on the job. Under this standard, covered employers must develop, implement, and enforce a mandatory COVID-19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular COVID-19 testing and wear a face covering at work.

Employers covered by the ETS - The ETS generally applies to employers in all workplaces that are under OSHA's authority and jurisdiction, including industries as diverse as manufacturing, retail, delivery services, warehouses, meatpacking, agriculture, construction, logging, maritime, and healthcare. Within these industries, all employers that have a total of at least 100 employees' firm- or corporate-wide, at any time the ETS is in effect, are covered.

Workplaces not covered by the ETS - This standard does not apply to workplaces covered under the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors or in settings where employees provide healthcare services or healthcare support services when subject to the requirements of the Healthcare ETS (29 CFR 1910.502)

Employees of covered employers not subject to the requirements - The ETS does not apply to employees who do not report to a workplace where other individuals such as coworkers or customers are present, employees while they are working from home, or employees who work exclusively outdoors.

Effective Dates - The ETS is effective immediately upon publication in Federal Register (November 4, 2021). To comply, employers must ensure provisions are addressed in the workplace by the following dates: 30 days after publication: All requirements other than testing for employees who have not completed their entire primary vaccination dose(s); 60 days after publication: Testing for employees who have not received all doses required for a primary vaccination.

Employer Policy on Vaccination - The ETS requires covered employers to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead establish, implement, and enforce a policy allowing employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and wear a face covering at the workplace.

Determination of employee vaccination status - The ETS requires employers to determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain records of each employee's vaccination status, and maintain a roster of each employee's vaccination status.

Employer support for employee vaccination - The ETS requires employers to support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each primary vaccination dose, and reasonable time and paid sick leave to recover from side effects experienced following each dose.

COVID-19 testing for employees who are not fully vaccinated - The ETS requires employers to ensure that each employee who is not fully vaccinated is tested for COVID-19 at least weekly (if in the workplace at least once a week) or within 7 days before returning to work (if away from the workplace for a week or longer). 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, or collective bargaining agreements or other collectively negotiated agreements. In addition, nothing prohibits employers from voluntarily assuming the costs associated with testing.

Employee notification to employer of a positive COVID-19 test and removal - The ETS requires employers to: (1) require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19; (2) immediately remove any employee from the workplace, regardless of vaccination status, who received a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider; (3) keep removed employees out of the workplace until they meet criteria for returning to work.

Face coverings - The ETS requires employers to ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes, except in certain limited circumstances. Employers must not prevent any employee, regardless of vaccination status, from voluntarily wearing a face covering unless it creates a serious workplace hazard (e.g., interfering with the safe operation of equipment).

Information provided to employees - The ETS requires employers to provide employees the following in a language and at a literacy level the employees understand: (1) information about the requirements of the ETS and workplace policies and procedures established to implement the ETS; (2) the CDC document “Key Things to Know About COVID-19 Vaccines”; (3) information about protections against retaliation and discrimination; and (4) information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.

Reporting COVID-19 fatalities and hospitalizations to OSHA - The ETS requires employers to report work-related COVID-19 fatalities to OSHA within 8 hours of learning about them, and work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the hospitalization.

Availability of records - The ETS requires employers to make available for examination and copying an employee’s COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee. Employers are also required to make available to an employee, or an employee representative, the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

Note: This is a synopsis of the news release, fact sheets and other information provided on OSHA’s website on November 4, 2021. Further details and a full text of the final rule, along with policy examples and other resources including a recorded webinar can be found at OSHA’s website: <https://www.osha.gov/coronavirus/ets2>