



## **New Workplace Protections for Workers**

*OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard*

November 9, 2021

### **Who is covered under the COVID-19 Vaccination and Testing Emergency Temporary Standard?**

The Occupational Safety and Health Administration (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) is aimed at protecting unvaccinated workers from the risk of contracting COVID-19 in the workplace. The ETS applies to all private employers with 100 or more employees, and in states with OSHA-approved State Plans where a state, local or municipal government has 100 or more employees.<sup>1</sup>

### **My employer has its own COVID-19 vaccination and testing policy, does the ETS still cover my workplace?**

Many employers across the nation were requiring COVID-19 vaccination and or testing as a condition of employment before the ETS was established. Moreover, certain state and local governments were requiring the same. When OSHA released the ETS, it established minimum requirements for COVID-19 vaccination and or testing in the workplace. The ETS is a federal rule, exemptions and or exclusions to this rule are few and far between. The ETS will apply to all of OSHA's jurisdictions. However, it should be noted that your employer and or OSHA-approved State Plan may create more stringent policies to minimize your risk of contracting COVID-19 in the workplace. In these scenarios, OSHA requires your employer and or an approved state plan to issue policies and or standards that are at least as effective as OSHA's ETS.

### **How will the ETS apply to unionized workplaces?**

Employers in unionized workplaces with 100 or more employees must, like all covered employers, follow the minimum requirements established by the ETS.

- Nothing in the ETS, however, prevents employers from agreeing with employees and their representatives to implement additional measures, and the ETS does not displace collectively bargained agreements that exceed the requirements of the ETS.
- As examples of additional measures that could be implemented via collective bargaining, employers might agree to cover the costs of face coverings or medical removal from the workplace in the event of a COVID-19 positive test, or to adopt a requirement that all employees, regardless of vaccination status, wear face coverings while working indoors.

### **What requirements must my employer comply with under the ETS?**

Each employer must develop a mandatory COVID-19 vaccination policy requiring each employee to be fully vaccinated, determine the vaccination status of each employee, maintain a record of each

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<sup>1</sup> The following 28 states or territories have OSHA-approved State Plans that cover both private, and state and local government workers: AK, AZ, CA, CT, HI, IL, IN, IA, KY, MD, ME, MI, MN, NC, NJ, NM, NV, NY, OR, PR, SC, TN, UT, VI, VT, VA, WA, and WY.

employee's vaccination status, and must preserve acceptable proof of vaccination for each employee who is fully or partially vaccinated.

Employers can exempt some workers from the ETS. Exemptions can be applied to workers:

- where a COVID-19 vaccine is medically contraindicated,
- where medical necessity requires a delay in COVID-19 vaccination, or
- where workers are legally entitled to a reasonable accommodation under federal civil rights laws because they have a disability or sincerely held religious beliefs, practices, or observances that conflict with the COVID-19 vaccination requirement.

**I want to get the COVID-19 vaccination, does my employer have to provide paid time off to receive the vaccine? What if I experience side effects from the COVID-19 vaccine?**

The employer must support COVID-19 vaccination by providing a reasonable amount of time to each employee for each of their primary vaccination doses, and provide up to 4 hours paid time, including travel time, at the employee's regular rate of pay for this purpose. The employer must also provide reasonable time and paid sick leave to recover from side effects experienced following any primary vaccination dose to each employee for each dose.

**I am not ready to be vaccinated from the deadly disease COVID-19, can my employer offer an alternative to the COVID-19 vaccine?**

The employer must ensure that each employee who is not fully vaccinated be tested for COVID-19 at least once every 7 days. Any worker who does not provide one of the acceptable forms of proof of vaccination status to the employer must be treated as not fully vaccinated.<sup>2</sup>

**My employer has implemented COVID-19 vaccination or COVID-19 testing in my workplace, who pays for the weekly COVID-19 testing?**

The ETS does not require the employer 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.<sup>3</sup>

**What happens if I have tested positive for COVID-19?**

Regardless of COVID-19 vaccination status or any COVID-19 testing required the employer must:

1. Require each employee to promptly notify the employer when they receive a positive COVID-19 test or are diagnosed with COVID-19 by a licensed healthcare provider; and
2. Immediately remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider and keep the employee removed until the employee receives a negative result on a COVID-19 test.

**If I'm COVID-19 positive, will my employer be required to pay my salary, benefits and or wages?**

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<sup>2</sup> Acceptable forms of proof form COVID-19 vaccination include a COVID-19 vaccination record card issued from a federal, state, or local health department, a licensed healthcare provider or a signed attestation of receiving COVID-19 vaccination.

<sup>3</sup> See the Fair Labor Standards Act, American Disabilities Act and or the U.S. Equal Employment Opportunity Commission for guidance on who pays for COVID-19 testing.

The employer is not required to provide paid time to any worker for removal from the workplace because of a positive COVID-19 test under the ETS. However, paid salary, benefits and or wages may be required by other laws, regulations, or collective bargaining agreements.

### **Do I have to wear a face covering?**

The employer must ensure that each employee who is not fully vaccinated wears a face covering when indoors and when occupying a vehicle with another person for work purposes, with some minimal exceptions.

### **Can I wear a face covering even if I'm vaccinated?**

The employer must not prevent any employee from voluntarily wearing a face covering or facemask unless the employer can demonstrate that doing so would create a hazard of serious injury or death, such as interfering with the safe operation of equipment.

### **Who pays for face coverings?**

The employer is not required to pay for any costs associated with face coverings; however, employer payment for face coverings may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.

### **What information does my employer need to provide to workers?**

The employer must inform each employee, in a language and at a literacy level the employee understands, about the requirements of the standards as well as any employer policies and procedures established to implement the standard. Additionally, the employer must inform each worker about COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated and OSHA's whistleblower protections which prohibit the employer from discharging or discriminating against a worker for reporting a work-related injuries or illness.

### **What if a coworker dies from COVID-19?**

The employer must report to OSHA each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality and each work-related COVID-19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization.

### **Can I request my employer's COVID-19 vaccination records?**

By the end of the next business day after a request, the employer must make available, for examination and copying, the individual COVID-19 vaccine documentation and any COVID-19 test results for a particular employee to that employee and to anyone having written authorized consent of that employee. By the end of the next business day after a request by an employee or an employee representative, the employer must make available to the requester the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

### **When does this ETS Go into Effect?**

The effective date for the ETS was November 5, 2021. Although the ETS becomes effective immediately, employers are not required to comply with the requirements of the ETS until December 6th, 2021 for most sections and January 4, 2022 for complying with requirements for weekly testing for not fully vaccinated workers.