
OSHA'S NEW VACCINE OR TEST RULE: WHAT EMPLOYERS NEED TO KNOW

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OVERVIEW

- The Basics
- Legal Challenges
- Which Employers are Covered?
- Which Employees are Covered?
- The ETS Requirements
- Next Steps and Logistics

THE BASICS

- Emergency Temporary Standard (ETS) from the Department of Labor's Occupational Safety and Health Administration (OSHA)
- Part of the "Path Out of the Pandemic" plan announced by President Biden in September
- OSHA has the authority to issue an ETS which takes effect immediately if OSHA determines that workers are in grave danger due to a new hazard and an ETS is necessary to protect them
- December 5, 2021 and January 4, 2022 are the key compliance dates
- Note – These rules are distinct from the vaccine rules for federal contractors and Medicare/Medicaid certified providers

LEGAL CHALLENGES

- At least a dozen cases have already been brought in six different federal circuit courts challenging the ETS
- On November 6, the Fifth Circuit issued a temporary injunction
- On November 16, a lottery will be held to select which of the circuit courts will handle the consolidated cases
- There is good chance that this will end up before the Supreme Court
- Takeaway – This is a fast developing issue and covered employers should plan ahead and not assume that the rule will not go into effect as scheduled

WHICH EMPLOYERS ARE COVERED

- The ETS applies to employers with 100 or more employees
- All employees count, including employees who are working remotely, as well as temporary and seasonal employees
- Properly classified independent contractors and workers supplied and employed by a staffing agency will not be counted
- Related entities that come together to handle safety matters will get counted as a single entity

WHICH EMPLOYEES ARE COVERED

- **The ETS rules do not apply to the following employees:**
 - Employees who do not report to a workplace where there is anyone else present
 - Employees who work exclusively from home and never enter the workplace
 - Employees who work exclusively outdoors
- *BUT these employees still count for the purposes of the 100 employee threshold!*

PHASE I ADMINISTRATIVE REQUIREMENTS

Effective Dec. 5 all covered employers must:

- Identify the vaccination status of all of their covered employees
- Report work-related COVID fatalities to OSHA within 8 hours of the employer learning of the death
- Report work-related COVID hospitalizations within 24 hours of the employer learning of the hospitalization
- Provide employees with information on the ETS and vaccines in a language and at a literacy level the employees understand

PHASE I LEAVE REQUIREMENTS

Effective Dec. 5 all covered employers must also:

- Provide employees with up to 4 hours of paid leave to receive each dose of the COVID vaccine
- Provide employees with “reasonable time and paid sick leave to recover from side effects experienced following any primary vaccination dose to each employee for each dose”

PHASE I SAFETY REQUIREMENTS

Effective Dec. 5 all covered employers must also:

- Require that all unvaccinated employees wear face coverings when they are indoors or sharing a vehicle with another person for work purposes
- Implement a policy to require employees to provide notice if they are diagnosed with, or test positive for, COVID-19 and to remove such employee from the workplace until certain return to work criteria are met

PHASE 2 VACCINE OR TEST REQUIREMENT

Effective Jan. 4 all covered employers must :

- Require that all employees be fully vaccinated or
- Require that employees who are not fully vaccinated get tested for COVID-19 at least once a week
- *Unvaccinated employees who are only occasionally in the workplace need only submit proof of a negative COVID test taken within the last 7 days before entering the workplace*

DEFINITION OF FULLY VACCINATED

An employee is considered fully vaccinated two weeks after receiving the last dose of a COVID-19 vaccine series

This means advance planning will be required for employers and employees!

MORE ON THE TESTING REQUIREMENT

- The employer must maintain a record of the employees' test results
- The ETS does not require employers to provide employees with paid time to undergo testing
- The ETS does not require employers to cover the cost of testing (i.e. they can pass the cost to the employees)

BUT there may be other rules in play require employers to cover the cost of testing or pay for testing time

NEXT STEP AND LOGISTICS

- Gather information on employee vaccine statuses
- Start to consider what approach the business wants to take if the ETS goes into effect
- Communicate with employees about anticipated policies and deadlines



QUESTIONS?

Thank you for joining us!