

e-Alert

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OSHA's COVID-19 Vaccine and Testing ETS Update

Background

The Occupational Safety and Health Administration (OSHA) published the [COVID-19 Vaccine and Testing Emergency Temporary Standard \(ETS\)](#) in November 2021. Since the publication, the ETS has brought controversy as to whether OSHA has the authority to implement such a standard. On December 17, 2021, the Sixth Circuit Court approved OSHA to proceed with implementing the ETS along with some deadline revisions.

Summary

Based on the court's approval, employers with 100 or more employees and/or a contract with the federal government should take the following steps to implement vaccine and testing mandates throughout the workplace.

By January 10, 2022, employers should:

- Create a roster of all active employees with each employee's vaccination status, ensuring records are readily available for OSHA inspection at any time;
- Create and implement a vaccination and testing policy;
- Determine an internal process for reporting COVID-19 related incidents to OSHA within 24-hours of the employer's notification;
- Provide up to four hours of paid travel time per dose to receive their COVID-19

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vaccination; and

- Provide up to two paid days per dose to recover from any vaccine related side effects.

On February 9, 2022, employers should:

- Begin weekly testing of employees who are not fully vaccinated;
- Begin mask mandates for employees who are not fully vaccinated; and
- Prepare for OSHA to start issuing fines and violations for noncompliance.

Important Note:

On December 18th, the U.S. Department of Labor made the following [statement](#) regarding the above deadlines:

“To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’s testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.”

Employer Next Steps

- Employers should make reasonable efforts to meet the deadlines outlined above.
- Employers should implement a vaccine and mask mandate policy throughout their organization by January 10, 2022, to comply with the ETS.
- Employers should handle vaccine exemptions through an Interactive Accommodation Process set forth by the Americans with Disabilities Act (ADA).
- Employers should familiarize themselves with any additional COVID-19 testing mandates within the states where they have a business presence.
- If you are a Full-Service or Virtual HR client and would like our assistance with establishing a vaccine and/or mask mandate policy, please [email us](#).

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