

Dear EA Members:

Earlier today OSHA issued a new Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to either have all employees vaccinated or have unvaccinated employees undergo weekly testing and wear face coverings. While there is much information to sort through regarding this ETS, below are some key points:

- The ETS is effective when the rule is published, which will happen tomorrow, November 5, 2021.
- All covered employers must comply with most requirements within 30 days of publication.
- Within 60 days of publication, employers must start testing employees who have not been vaccinated.
- Employers must count all employees toward the 100 employee count, including part-time and seasonal employees. If an employer passes the 100 employee count limit at any time during the ETS is in effect, they must comply with the ETS as long as it is in effect.
- Employers must determine the vaccination status of each employee, obtain acceptable proof of vaccination status from vaccinated employees and maintain records and a roster of each employee's vaccination status.
- Employers must require employees to provide prompt notice when they test positive for COVID-19 or receive a COVID-19 diagnosis. Employers must then remove the employee from the workplace, regardless of the vaccination status; employers must not allow them to return to work until they meet required criteria.
- Employers must ensure each worker who is not fully vaccinated is tested for COVID-19 at least weekly (if the worker is in the workplace at least once a week) or within seven days before returning to work (if the worker is away from the workplace for a week or longer).
- Employers must ensure that, in most circumstances, each employee who has not been fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes.
- The ETS does not require employers to pay for testing or face coverings.
- 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 undergo weekly COVID-19 testing and wear a face covering at the workplace.
- The ETS does not apply to employees who do not report to a workplace where other individuals such as coworkers or customer are present, employees while they are working from home or employees who work exclusively outdoors.
- The ETS requires employers to support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each vaccination dose, and reasonable time and paid sick leave to recover from side effects experienced following each dose.

Here are links to OSHA that provide additional information:

- News Release - <https://www.osha.gov/news/newsreleases/national/11042021>
- Fact Sheet - <https://www.osha.gov/sites/default/files/publications/OSHA4161.pdf>
- ETS Summary - <https://www.osha.gov/sites/default/files/publications/OSHA4162.pdf>
- Mandatory Vaccination Policy Sample - <https://www.osha.gov/sites/default/files/covid-19-ets2-sample-mandatory-vaccination-policy.docx>
- Vaccination or Testing and Face Covering Sample - <https://www.osha.gov/sites/default/files/covid-19-ets2-sample-employee-choice-vaccination-policy.docx>
- FAQs - <https://www.osha.gov/coronavirus/ets2/faqs>

We will keep you informed as we learn more.

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