

Electronic Alert

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OSHA Releases COVID-19 Vaccination & Testing Rules for Employers with 100 or More Employees

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Today, the federal Occupational Safety and Health Administration (OSHA) announced the highly anticipated Emergency Temporary Standard (ETS) that requires employers with 100 or more employees (“covered employers”), regardless of industry, to require their employees be vaccinated against COVID-19 or submit to weekly COVID-19 testing. The rule also requires unvaccinated employees in the workplace to wear face coverings, with a few exceptions.

The 100 employee threshold applies to companies who employ 100 or more employees anywhere in the United States. For example, if a company has 25 employees in Oregon and 75 employees in Texas, it would be subject to the ETS.

The following outlines some of the major employer requirements under the ETS:

Vaccination Requirement

The ETS requires that covered employers develop, implement, and enforce a mandatory vaccination policy. Employers are required to obtain acceptable proof of vaccination and maintain a record of each employee’s vaccination status. Further, employers are required to provide employees with reasonable time, including up to four hours of paid time off to receive each vaccination dose and reasonable sick leave for those employees who experience side effects after either dose.

Testing Alternative

As an alternative to a mandatory vaccine policy, employers are required to establish, implement, and enforce a policy that requires all non-vaccinated employees to undergo weekly testing.

The ETS requires non-vaccinated employees to undergo testing on at least a weekly basis. If an employee is away from the workplace for a week or longer, the employee must receive a negative test within seven days before returning to work.

Under the ETS, employers are not required to pay for costs associated with testing. Under Oregon law, however, employers are generally required to pay for out-of-pocket expenses for work-related medical exams and pay employees for the time they spend traveling to and from and undergoing medical exams. The Oregon Bureau of Labor and Industries (BOLI) has taken the position that COVID-19 testing is a medical exam.

Face Coverings

Employees who are not fully vaccinated must wear face coverings when indoors or when occupying a vehicle with another employee for work purposes.

Employers are not allowed to prevent any employee from voluntarily wearing a face covering unless it creates “a serious workplace hazard.”

Other Requirements

Under the ETS, employers must require their employees to promptly provide notice when they receive a positive COVID-19 test or are otherwise diagnosed with COVID-19. Employers are also required to immediately remove any employee (regardless of vaccination status) who has tested positive for COVID-19 or been diagnosed by a licensed healthcare provider. Lastly, employees must be kept out of the workplace until they meet the criteria to return to work (typically quarantining and/or receiving a negative COVID-19 test).

The rule also requires employers who learn that their employee has died from COVID-19 to report the incident to OSHA within eight hours and to report employee hospitalization stemming from COVID-19 within 24 hours.

Exceptions: The ETS does not apply to employers who are covered under the federal contractor or federal Medicare and Medicaid healthcare COVID-19 rules (both are generally stricter than the ETS). Further, the ETS does not apply to employees who report to a workplace where other people are not present, employees who are working from home, or employees who work exclusively outdoors.

Effective Dates: All of the requirements under the ETS (except for testing) take effect December 5, 2021. The testing requirement for unvaccinated employees will take effect on January 4, 2022.

In both Oregon and Washington, the state OSHA programs will release their rules—which are required to be at least as effective as the ETS, but they may implement stricter criteria—within 30 days.

The vaccine deadline for federal contractors and healthcare providers participating in Medicare or Medicaid has been changed to January 4, 2022, to align with employers covered under the ETS.

Potential Changes to Come: Because it is an emergency temporary standard, the rule takes effect immediately, however, OSHA will continue to take public comment and says it may revise or update the ETS as it continues to monitor COVID-19 infections. Additionally, numerous legal challenges to the ETS are expected, and this could draw out the implementation of the ETS.

Employers who fail to comply with the ETS could be fined up to \$13,653 per violation. A willful violation could lead to a fine of up to \$136,532. While the key deadlines are 30 and 60 days out, it is important for employers to prepare for compliance as soon as possible.

For questions related to OSHA vaccination and testing rules or for any other questions about navigating COVID-19 in the workplace, contact Bruce Garrett at 503-276-2175 or bgarrett@barran.com.