

# NOW & NEXT

OSHA Alert

NOVEMBER 4, 2021

## Fed/OSHA releases Emergency Temporary Standard regarding mandatory vaccination for US companies with 100+ employees

By Rachel L. Conn, Kimberly K. Harding, Jessica Schachter Jewell, and Shelagh C.N. Michaud

Fed/OSHA officially mandates COVID-19 vaccinations or weekly testing for employees at large companies.



### What's the Impact?

- / Workers must be fully vaccinated or submit to weekly testing by January 4, 2022
- / Penalties for non-compliance can be steep

The much-anticipated emergency temporary standard (“ETS”) mandating COVID-19 vaccinations or at least weekly testing for workers at US companies with 100 or more employees was released this morning. A more thorough breakdown and analysis of the 490-page publication will follow soon, and we will be holding a webinar to answer your questions on November 12. In the interim, major highlights are below.

- / The deadline for workers to be fully vaccinated or submit to weekly testing is January 4, 2022
- / Employers will not have to cover costs for COVID-19 tests for unvaccinated workers who choose the testing option, but employers may be required to pay for testing for employees who have medical or religious exemptions, under other applicable laws, and/or under

collective bargaining agreements or employment contracts. These issues will need to be reviewed on a case-by-case basis

- / Employers must begin providing paid time off for workers to get vaccinated (and to recover from any side effects) and comply with the masking requirement for unvaccinated workers as of December 5, 2021
- / Part-time workers count in determining the total number of employees, but independent contractors generally do not
- / Covered employers also will be required to develop, implement, and enforce a mandatory COVID-19 vaccination policy or a policy requiring employees to choose either to get vaccinated or to undergo regular COVID-19 testing and wear a face covering at work. Samples are available on the Fed/OSHA website<sup>1</sup>
- / Employers may face penalties of up to \$13,653 for each serious violation. If an employer is deemed to have deliberately disregarded the mandate, it could face fines as high as \$136,532 per violation
- / The ETS does not apply to federal contractor or federal contractor workplaces that are covered by the Safer Federal Workforce Task Force guidance requirements, or to workplaces covered by the emergency regulations also issued today by Centers for Medicare & Medicaid Services (CMS). These workplaces are subject to mandatory vaccination policies, with no options for weekly testing alternatives
- / An ETS can last for six months, after which it must be replaced by a permanent regulation
- / Prompt challenges to the ETS are expected

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<sup>1</sup> See "[Mandatory Vaccination Sample](#)" and "[Vaccination or Testing and Face Covering Sample](#)."