

OSHA Issues New COVID-19 Vaccination and COVID-19 Response Resource Center: Timely Counsel for your Business

By Erin Barker and D.J. O'Brien III on 11.04.2021

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The Department of Labor's Occupational Safety and Health Administration (OSHA) recently issued a COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) for employers with 100+ employees. The new standard focuses on protecting currently unvaccinated workers – those who have a higher risk of severe health outcomes from COVID-19 and are more likely to contract and transmit COVID-19 in the workplace than vaccinated workers.

Employers subject to the COVID-19 Vaccination and Testing ETS should review the new standard with their attorney and immediately begin taking steps to comply.

Who Must Comply?

The new standard applies to employers with a total of 100+ employees – part- or full-time and company- or firm-wide – at any time the standard is in effect. OSHA believes that employers with 100+ employees have sufficient administrative and technological systems in place to comply.

The new standard does not apply to workplaces subject to the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors. It also does not apply to settings where any employee provides healthcare services or healthcare support services that are already subject to the requirements of the Healthcare ETS.

What Does Compliance Entail?

The ETS requires employers with 100+ employees to ensure employees are either fully vaccinated against COVID-19 or get tested weekly and wear face coverings. An employer can choose whether it will:

- require vaccination for all employees, or
- allow employees to choose between vaccination and weekly testing and face coverings.

Employers should establish and implement a written policy that satisfies one of the above compliance alternatives. Additionally, employees who are partially vaccinated must be tested weekly until they are fully vaccinated.

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Private Employers with more than 100 Employees

The new ETS does not apply to employees who do not report to a workplace where other individuals such as coworkers or customers are present, employees who work exclusively remotely, or employees who work exclusively outdoors.

Furthermore, employers must maintain a record of each employees' vaccination status and also a record of each test result provided by each employee. These records should be maintained as confidential medical records and must be preserved while the ETS is in effect.

Compliance Timeline

The ETS is effective immediately upon publication in the *Federal Register*. As of the publication of this alert, the ETS had not yet been published, although it is expected to be published in the *Federal Register* on Nov. 5, 2021.

A covered employer must ensure compliance by the following dates:

- 30 days after publication – All requirements other than testing for employees who have not completed their entire primary vaccination dose(s).
- 60 days after publication – Testing for employees who have not received all doses for a primary vaccination.

OSHA believes compliance with the requirements of the ETS within the specified dates will be achievable under most circumstances. However, each covered employer should compare its current policies against the requirements of the 100+ employee ETS to ensure full and timely compliance with the new rules.

On Nov. 18, 2021, Brooks Pierce attorneys D.J. O'Brien and Erin Barker will present a webinar on the new COVID-19 Vaccination and Testing ETS. You can register for the webinar [here](#).

This Alert provides an update on a legal development. It is not intended as legal advice. For further information regarding OSHA's new COVID-19 Vaccination and Testing ETS, review OSHA's collection of resources [here](#), including OSHA's collected FAQs [here](#). For assistance evaluating how the new standard impacts your workplace, please reach out to a member of the Brooks Pierce Labor & Employment Team.

Tags: Occupational Safety and Health Administration (OSHA), Vaccine