

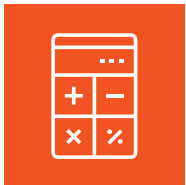
GUIDE

FAST TRACK COMPLIANCE TO OSHA'S COVID-19 VACCINATION EMERGENCY TEMPORARY STANDARD

CHANGES TO WORKPLACE HEALTH REQUIREMENTS ARE ON THE WAY!

While the Occupational Safety and Health Administration (OSHA)'s emergency temporary standard (ETS) is yet to be announced, this directive is imminent. The ETS will enforce a vaccine mandate for employers with 100 or more employees and require unvaccinated employees to provide weekly negative test results before coming to work.

**Don't get caught off guard.
Avoid possible penalties by preparing now.
Here's how.**



STEP 1. DETERMINE YOUR NUMBER OF EMPLOYEES

All employers with 100 or more employees will be subject to the federal ETS - or a state standard that meets the requirements of the federal standard.

- OSHA officials have stated that the 100-employee threshold is based on a company wide headcount, not the number of employees at a particular worksite.
- The headcount includes all employees, whether full time, part-time, or working temporarily.
- Independent contractors and leased employees are not counted. (the client employer is not the employer of record)
- If an employer's total headcount fluctuates above and below 100, the ETS will most likely apply when the total reaches 100 at any time during the year.



STEP 2. SURVEY EMPLOYEES ON VACCINATION STATUS

Get an understanding of how many unvaccinated workers you have to help determine your best compliance approach.

- Surveying employee sentiment around required vaccination will help you weigh the cost of offering weekly testing to all unvaccinated employees or only offering testing as a religious or disability accommodation.
- This information will also help you prepare basic policies, procedures, and communications for employees that can be adapted based on the ETS.



STEP 3. RESEARCH TESTING OPTIONS

Review and understand the logistics of testing before determining a compliance approach.

QUESTIONS TO CONSIDER:

Accessibility

- Are there testing locations near your workplace? What is their capacity for handling your employee testing?
- Is onsite testing a more convenient option?
- Will you accept home testing kit results? (The Biden administration has secured commitments from Walmart, Amazon, and Kroger to sell the kits at cost.)

Cost

Understand the cost implications of testing before implementing a policy. At this time, it is unclear who will be required to bear the cost of testing. The ETS will hopefully clarify this issue, but it is important to know what impact paying for tests vs. not paying for tests might have on your business.

- Contact testing suppliers to compare pricing. Include organizations providing onsite testing services.
- Will your budget allow for employer-paid testing? If so, for how long?
- If you choose not to offer employer-paid testing, the Fair Labor Standards Act and some state laws prohibit employees from being asked to incur work-related expenses that reduce their earnings below the minimum wage.
- The IRS has stated that in-home test kits are reimbursable under plans such as flexible spending accounts and health savings accounts, which may help employees manage costs.



STEP 4. CONSIDER PAID-TIME-OFF REQUIREMENTS

President Biden's plan calls for paid time off (PTO) for employees to receive the vaccine and recover from any side effects. The ETS should provide more details on the specifics of this requirement, but here are a few things to consider when creating a PTO policy.

- Do you want to consider offering a new bank of leave or advancing PTO to employees who have already exhausted their paid leave or need time off to receive the vaccine or recover from it?
- Is the time an employee spends obtaining a COVID-19 test or vaccination considered working hours if done during their normal workday/shift, or will you require the use of PTO?



STEP 5. ADDRESS REMOTE-WORKER REQUIREMENTS

The executive order requiring vaccination for federal workers requires most employees working from home to be vaccinated; however, the ETS may not.

- If you have remote workers who never come into the office, you may use remote work as an option for unvaccinated workers.
- Depending on the guidance from the ETS, determine the employee-eligibility requirements for a "full-time remote" employee status. Next, work with your team to determine how many employees will fall into this category within your organization.



STEP 6. DETERMINE A COMPLIANCE APPROACH AND CREATE A WRITTEN POLICY

After gathering the data in the steps above, determine if your organization should:

- Allow unvaccinated employees the option of weekly testing in lieu of vaccination.
- Require vaccination for all employees without the option for weekly testing, except when allowed as an accommodation.
- Provide official testing locations to employees, allow home-kit testing, or provide onsite testing.
- Pay for testing, if not required by the ETS.
- Increase PTO leave banks, if not required by the ETS.
- If allowed under the ETS, allow full-time remote-worker positions to be excluded from the vaccination and testing requirements.

These items should help you create a clearly written policy detailing the requirements you have decided upon and the consequences for noncompliance.

Some helpful things to consider for your policy:

- Required documentation for proof of vaccination and/or testing.
- An official process for employees to submit required documentation and procedures on the safe storage and retention of the information.
- Time frames for current and new hires to comply.
- Auditing process for any undue hardship accommodation requests due to a disability or religious reasons.
- If an employee fails to comply, outline the steps to be taken, up to and including termination.



STEP 7. COMMUNICATE, COMMUNICATE, COMMUNICATE

Start developing trust and communicate to your employees now.

- Set expectations. Notify employees about the upcoming ETS and explain that your company will be in full compliance.
- Follow up with details to employees as more information comes available. Make this information easily accessible.
- If you have already determined some compliance aspects you wish to share, or if a company policy is already in line with the expected requirements, communicate that as early as possible.
- You can choose to communicate ahead of time where employees can get vaccines and how to find a location near their homes or the workplace.
- Detail whether employees must seek testing outside of work hours.

The effects of this global COVID-19 crisis will have a long-term impact on your business. Following these steps will help you quickly comply with any upcoming new requirements and protect your business now and in the years to come.



Sources:

<https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/how-to-prepare-osh-covid-19-vaccination-emergency-temporary-standard.aspx>

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