

First impressions of OSHA's COVID vaccine mandate

OSHA's Emergency Temporary Standard — a/k/a/ the vaccine mandate — hit the [Office of the Federal Register](#). Employers have been waiting with anticipation and the wait is finally over. While it'll take some time to dive deep into these standards and their implications, there are some clear basics that everyone should understand from the start.

So fasten your seatbelt; it's going to be a bumpy ride.

Which employers are covered?

Employers with 100 or more employees are covered under the ETS. This counting is done at the corporate level and includes employees on the payroll as of Nov. 5, 2021. If you have separate offices or separate divisions, combine all employees to determine whether you hit the 100+ employee threshold.

Once you're covered, you stay covered, even if your employee count drops. If you have fewer than 100 employees but then hire enough employees to vault over the line, you're covered as of that date.

The following employees must be counted:

- Part-time employees.
- Employees who work from home.
- Employees who work exclusively outdoors.
- Temporary and seasonal employees you employ directly.

Independent contractors aren't counted. Employees employed by staffing agencies don't count, either. But you and your contractors have a joint duty to ensure the common workplace is safe.

The following employers aren't covered:

- Federal contractors and subcontractors, which are already subject to their own ETS.
- Health care employers, which are also already subject to a separate ETS.

Which employees are covered?

Employees who work in the office are covered.

These employees aren't:

- Employees who don't report to a workplace where other individuals are present.
- Employees who work from home.
- Employees who work exclusively outdoors.

What do you have to do?

The ETS requires you to establish and implement a written mandatory vaccination policy unless you adopt an alternative policy requiring covid testing and masks for unvaxxed employees. Medical and religious accommodations continue to be available to employees. You may, however, discipline employees who don't have a medical or religious reason for not getting shots.

You will also need to take these actions:

- Determine employees' vaccination status, obtain acceptable proof of vaccination from them, maintain records of employees' vaccination status, and keep a roster of employees' vaccination status.
- Ensure employees who aren't fully vaccinated are tested at least weekly or within seven days before returning to work, if they're away from the workplace for a week or longer. You don't have to pay for these tests.
- Require employees to promptly notify you if they test positive or are diagnosed with the virus.
- Immediately remove any employee, regardless of vaccination status, who receives a positive covid-19 test or is diagnosed with the virus and keep them out of the workplace until return-to-work criteria are met.
- Ensure employees who aren't fully vaccinated wear masks when indoors or when occupying a vehicle with another person for work purposes.
- Provide employees with information about the ETS requirements and workplace policies and procedures established to implement the ETS; vaccine efficacy, safety and the benefits of being vaccinated; protections against retaliation and discrimination; and laws that provide for criminal penalties for knowingly supplying false statements or documentation. You can provide the CDC's document [Key Things to Know About COVID-19 Vaccines](#).
- Report work-related COVID fatalities to OSHA within eight hours of learning about them and work-related COVID in-patient hospitalizations within 24 hours of learning about the hospitalization.
- Make records available for examination and copying to employees or their representatives.

Employees must be given four paid hours off at their regular rate of pay to receive each shot, but booster shots don't count. OSHA suggests these hours count as work hours, not idle time pay, so you should probably watch your overtime calculations for employees who work overtime during the weeks they get their shots.

You are required to provide a reasonable amount of time to employees who need time off to recover. You may cap this time but your cap must be reasonable; OSHA considers two days reasonable. Employees may use their accrued paid sick leave for this purpose. If they have no leave, you can't require them to rack up negative leave in their banks.

When does all of this have to happen?

Employees must be fully vaxxed or begin weekly covid testing (and masking in the workplace) by Jan. 4, 2022.

The ETS goes into effect on Dec. 5, 2021.

You are invited to comment on the ETS. Identify your comments by Docket No. OSHA-2021-0007. Comments may be submitted electronically through the Federal [e-Rulemaking Portal](#).

Read more

OSHA has put several facts sheets up on its website and you can access them [here](#) and [here](#). FAQs are available [here](#).