



PUBLIC AFFAIRS  
POLICY  
BRIEF SERIES



POLICY BRIEF  
**EMERGENCY TEMPORARY STANDARD  
(ETS) FOR COVID-19 VACCINATIONS**

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) published its long-awaited Emergency Temporary Standard (ETS) for COVID-19 Vaccinations.

**The ETS is temporary and will be in effect for 6 months.**

After that, OSHA will determine if the ETS should become permanent, rescinded, and/or modified to some degree.

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**HOW CAN EMPLOYERS COMPLY WITH THE ETS?**

**To be in compliance with the ETS, employers must:**

- ✓ Require that all employees get vaccinated and show proof of vaccination status (unless the employee qualifies for a medical or religious exemption) or
- ✓ Provide a weekly testing option for those employees who do not wish to be vaccinated and require those employees to be masked in the workplace.

**IMPORTANT DATES**

**Effective December 5, 2021,** employers must require unvaccinated employees to be masked in the workplace. Employers must also provide all employees up to 4 hours of paid leave to get each vaccination dose (excluding booster shots) and additional “reasonable” leave for employees who need to recover from any vaccine side effects.

**By January 4, 2022,** all employees must either be fully vaccinated or begin weekly COVID-19 testing.

**WHO IS AFFECTED BY THE ETS?**

**The ETS applies to employers with 100 or more employees,** and that quantity is determined company-wide, not per location. An employer is covered by the ETS if, at any time during the period in which the ETS is in effect, the employer has at least 100 employees—even if at times it has fewer than 100 employees.

**The 100+ employee threshold includes temporary and seasonal workers, minors, and part-time employees.** Also, employees working from home or exclusively outdoors count toward the 100-employee threshold, but they do not have to be vaccinated or tested if they do not come into contact with other employees or customers. Independent contractors and employees of staffing agencies do not count toward the 100+ threshold.



## WHAT ABOUT FRANCHISES?

For franchise operations, **each franchisee is generally considered a separate business.** Operators of multiple locations will be considered covered employers if collectively at least 100 employees work at the different locations.



## DOCUMENTATION REQUIRED TO PROVE VACCINATION STATUS

**Employers must obtain proof of vaccination status through the following means:**

- ✓ Record of immunization from a health care provider or pharmacy.
- ✓ Copy of the COVID-19 vaccination card.
- ✓ Copy of medical records documenting the vaccination.
- ✓ Copy of immunization records from a public health, state, or tribal immunization information system.
- ✓ Copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of the health care professional or clinic site administering the vaccine.

**Employees who are not able to obtain proof of vaccination must sign and date a statement that:**

- ✓ Attests to their vaccination status.
- ✓ Stipulates that they have lost or are otherwise unable to provide proof.
- ✓ Acknowledges that providing false information regarding vaccination status may subject them to criminal penalties.



## COVID-19 TESTING




**Any employee who is not fully vaccinated and reports to the workplace must submit to weekly COVID-19 testing.** Employers do not have to pay for COVID-19 tests. However, other laws outside of the ETS may require employer to pay for tests. The employee must take and provide proof of a negative test at least once every 7 days. If an employee frequents the office less often than every 7 days, then the employee must be tested for COVID-19 within 7 days prior to returning to the workplace and must provide proof of a negative test upon return to the workplace.

Acceptable COVID-19 tests are those that are cleared, approved, or authorized by the Food and Drug Administration and that are administered in accordance with authorized instructions. Employers must ensure that the test is not self-administered and self-read—unless observed by the employer or other authorized telehealth proctor.

## EMERGENCY TEMPORARY STANDARD (ETS) FOR COVID-19 VACCINATIONS

Should an employee test positive for COVID-19, employers are required to remove the employee immediately from the workplace.

### To return to work, the employee must:

-  Receive a negative result on a COVID-19 nucleic acid amplification test (NAAT).
-  Meet the return-to-work criteria established in the CDC's "Isolation Guidance" or
-  Receive a recommendation to return to work from a licensed health care provider.

**Employers must maintain all testing records while the ETS is in effect.** Documentation should be confidential and maintained separately from employees' personnel files.



### PAID LEAVE REQUIREMENTS

**Employers must provide up to 4 hours of paid leave for the employee to receive each vaccination (excluding booster shots).** Employers may not require employees to use existing leave for vaccinations. Additionally, employers must allow "reasonable" time off to recover, and OSHA suggests providing two days. Employers can require employees to use existing leave balances to recover from side effects of vaccination. The ETS does NOT require employers to provide paid leave to workers who test positive.



### STATE LAWS & PROGRAMS

**The ETS preempts any inconsistent state or local laws that provide a weaker level of protection, such as those that ban employers from requiring masks, testing, or vaccinations.**

Twenty-two states administer their own OSHA programs. In those states, worker safety agencies may develop their own plan that is "at least as protective" as the OSHA ETS. If they choose to do so, states must notify OSHA within 15 days and publish a plan within 30 days. The state plan must be at least as effective or more protective than OSHA's ETS, but not less protective.



### PENALTIES

**OSHA may fine a covered employer that does not comply with the ETS** up to \$13,653 for each violation of the standard. Employers that willfully or repeatedly violate the standard can be fined up to \$136,532. However, the Build Back Better Act, if enacted, would raise the maximum fine to \$700,000.