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OSHA Issues Emergency Temporary Standard

The Occupational Safety and Health Administration (OSHA) has issued an emergency temporary standard (ETS) to minimize the risk of COVID-19 transmission in the workplace. In most cases, employers with 100 or more employees must comply.

Effective Date

The ETS takes effect immediately but employers will have 30 days, or until December 5, 2021, to comply with all requirements except testing for employees who are not fully vaccinated (which has a January 4, 2022, compliance date).

These compliance dates mean that by no later than January 4, 2022, covered employers must ensure that their employees have received their final vaccination dose, or that unvaccinated employees are testing on a weekly basis. Employers who have not done so already should immediately begin creating and publishing a compliant policy to provide information about the ETS to their employees.

Coverage

The ETS covers all employers with 100 or more employees, as measured on a company-wide basis, except:

Those employers that are already covered by the COVID-19 vaccine mandate for federal contractors and subcontractors; and those employers covered by OSHA's COVID-19 Healthcare Emergency Temporary Standard. The ETS does not apply to employees who do not report to a workplace where other individuals are present, or while they are working from home or who work exclusively outdoors.

Employer Policy on Vaccination

The ETS requires covered employers to implement and enforce a mandatory COVID-19 vaccination policy but allows for an exception to mandatory vaccinations for employees who elect weekly COVID-19 testing. Those employees must also wear a face covering while at the workplace and while in a vehicle with another person for work-related purposes. Employees who opt for weekly testing in lieu of vaccination can be required to cover the cost of such testing.

Determination of Employee Vaccination Status

The ETS requires employers to determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain records of each employee's vaccination status, and maintain a roster of each employee's vaccination status. If not already started, the employer should start an employee vaccination status census, so that employers can understand which employees are not fully vaccinated and therefore are impacted by the ETS.

Paid Time Off

The ETS requires employers to provide employees reasonable time, including up to four hours of paid time, to receive each vaccination dose, and reasonable time (paid sick leave) to recover from side effects experienced following each dose.

The ETS requires employers to:

- a. require employees to promptly provide notice when they receive a positive COVID-19 test or are otherwise diagnosed with COVID-19;
- b. immediately remove any employee from the workplace who received a positive COVID-19 test or is diagnosed with COVID-19, regardless of vaccination status; and
- c. keep removed employees out of the workplace until they meet CDC criteria for returning to work.

Notification of Positive COVID-19 Tests

The ETS requires employers to make available for examination and copying an employee's COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee. Employers are also required to make available to an employee, or an employee representative, the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

How Employers Must Respond

All employers covered by the ETS should immediately begin drafting your company's Mandatory COVID-19 Vaccination Policy. This policy must be published and disseminated to employees no later than December 5, 2021.

The Dickie, McCamey & Chilcote Employment and Labor Law Group is available to help guide your company and assist with drafting these policies. We are also available with any questions you may have or to discuss your particular company's issues. Stay tuned to this page for updates on the inevitable developments that will occur as these mandates are changed and/or challenged in the courts.

Questions? Please contact Kristin L. Wedell at 216-685-1827 or kwedell@dmclaw.com or Paul J. Schumacher at 216-685-1827 or pschumacher@dmclaw.com.

Related Podcast: [A Conversation about Proposed COVID-19 Vaccine Mandates](#)