



EmPower HR

OSHA'S COVID-19

Temporary Standard On Vaccination & Testing

This checklist may be used as a guide for organizations with 100 or more employees committed to complying with the Emergency Temporary Standard (ETS), that went into effect on November 5, 2021.

The ETS requires all employers with 100 or more employees to:

- Get employees fully vaccinated by **January 4, 2022** and require unvaccinated employees to produce a negative test on at least a weekly basis.
- Pay employees for the time it takes to get vaccinated and, if needed, for sick leave to recover from side effects, by **December 5, 2021**.
- Ensure unvaccinated employees are masked by **December 5, 2021**.

Determine Employee Coverage

All private employers with 100 or more employees are subject to the federal ETS or a state standard that meets or exceeds the requirements of the federal standard. OSHA officials have stated that the 100-employee threshold will be based upon a companywide headcount rather than the number of employees at a particular worksite.

Employees Statuses Considered Headcount

- Full Time
- Part Time
- Temporary seasonal workers employed directly by the employer, if employed while the ETS is in effect

Employees Statuses Not Considered Headcount

- Independent Contractors
- Temporary employees obtained from staffing agencies

Note: The determination of whether an employer falls within the scope of the ETS based on number of employees should be made on the effective date of the standard, November 5, 2021. If an employer has 100 or more employees on the effective date, the ETS applies for the duration of the standard.

Survey Current Employees On Vaccination Status

Understanding how many unvaccinated workers an employer has will help inform the best compliance approach for the organization toward the choice of vaccination or weekly testing.

Recommended Survey Questions

- Have you received the COVID-19 Vaccine?
 - If not, do you plan to receive the COVID-19 vaccine?
 - If you are planning to receive the vaccine, in what time frame do you plan to do so?
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Recommended Process For Verifying Vaccination Status

- Develop a Vaccine Verification Task Force comprised of dedicated leaders or HR professionals to collect confidential information.
 - The ETS will likely require you not only ask for vaccination status but collect proof of vaccination as well.
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Verify Vaccination Status

- **Fully Vaccinated:** Yes / No
- **Vaccine Name:**
- **Dates of Vaccination Received:**
- **Documentation Type:**
 - Vaccination Record Card
 - Immunization Records
 - Medical Records Documenting the Vaccination
 - Employee Signed Statement

Consider Paid Time Off Requirements

Employers must support an employee's efforts to obtain the COVID-19 vaccination by providing up to four hours of paid time, including travel time, as well as provide reasonable recovery time and paid sick leave for employees to recover from side effects.

Employers should designate a dedicated point of contact to help administer time off requests, to ensure proper documentation is obtained and kept confidential.

Plan For Unvaccinated Employee Testing Requirements

Employees who report at least once every 7 days to a workplace where others, such as coworkers or customers are present:

- Must be tested for COVID-19 once every 7 days.
- Must provide documentation of the most recent COVID19 test result to the employer no later than the 7th day following the date on which the employee last provided a test result.
- Must wear a facemask.
- May not both self-administer and self-read the test unless observed by the employer or authorized telehealth proctor.

Additionally, employers are not required to pay for any costs associated with testing, however employer payment may be required by other state laws or collective bargaining agreements.

Research Testing Options

Whether an employer will offer the option of weekly testing to unvaccinated workers or only use testing as a religious or medical accommodation, understanding the logistics of testing should be reviewed before determining the employer's compliance approach.

Employers should have a plan in place for confidentially tracking employee COVID-19 test results in accordance with all applicable laws. It is also recommended to have a logistics plan in place for testing employees weekly.

Employers are not required to provide or pay for testing.

Testing Considerations

- Accessibility of testing
- Testing locations near facility
- On-site testing
- Days of the week to require testing
- Acceptable tests
- Home-testing



Address Remote Worker Requirements

Remote employees who are exempt and not covered by the emergency rule and who do not need to be tested, include the following:

- Those who do not report to a workplace where coworkers or customers are present.
- Those working exclusively from home.
- Those who work exclusively outdoors.

“Determine a compliance approach and create a written policy”

A clearly written vaccine mandate/and or testing policy should detail the requirements the employer has decided upon and the consequences for noncompliance.

Requirements To Consider

- Required documentation, both for proof of vaccination and for weekly testing.
- A process for employees to submit required documentation and procedures on storage and retention of the information.
- Time frames for current and new hires to comply.
- A process to request religious and medical accommodations.

- Provision for employees to take paid time off to receive the vaccine, and if necessary, take paid time off due to potential side effects.
- Outline how employees can certify they have received a vaccination.
- How you plan to enforce disciplinary actions for not complying by the designated deadline.
- Outline who is a covered employee.
- The ETS requirements for a positive COVID test, including the return to work criteria in the Center for Disease Control’s “Isolation Guidance.”
- Prohibitions against discharge, retaliation, and discrimination for reporting work related injuries or illness.
- Penalties associated with providing false statements or documentation.

Develop Employee Communications

Prepare an employee communication to include the following:

- The final policy based on ETS requirements.
- ETS required notification “Key Things to Know About COVID-19 Vaccines” from CDC website.
- To whom the vaccine and/or testing policies apply.
- Information on taking paid time off from work to receive the vaccine and recover from side effects.
- The date employees need to be vaccinated, if applicable.

- How employees can verify their vaccine status.
- What are the consequences employees will face if they refuse to comply.
- Develop and provide resources for employees about vaccination and testing sites near the workplace and keep information easily accessible.

Note: Several Republican-led states and private businesses filed a lawsuit in the Fifth Circuit Court of Appeals in Louisiana seeking an order that the vaccination or testing rule is unconstitutional and that it was mandated without authority.

On November 6 the court entered a temporary stay on the rule, finding that the plaintiff gave “cause to believe there are grave statutory and constitutional issues with the Mandate.” It’s recommended that employers continue to prepare as if the rule will be enforced as originally intended, lest be unprepared for the upcoming December 5th deadlines.

How EmPower HR Can Help?

EmPower HR offers a variety of human resource services tailored to your business needs. Let us handle the HR administrative tasks so you can focus on your business and employees.

Learn more at empowerhr.com

This document was prepared by EmPower HR and includes HR best practices, not legal advice. Please consult with your legal professionals before enforcing any process or policies related to the ETS guidelines.