

WHAT YOU NEED TO KNOW ABOUT OSHA'S MANDATORY VACCINATION RULE

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On November 4, 2021, the Department of Labor's Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard (ETS) on Covid-19 Vaccination and Testing. This ETS affects private employers with 100 or more employees and details several requirements regarding mandatory vaccination or testing of employees for Covid-19.

All such employers will be required to create and enforce a mandatory written vaccination policy that requires all employees to be fully vaccinated, unless they fall under certain medical or religious exemptions. An exception to the mandatory vaccination policy requirement is to create and implement a policy requiring all unvaccinated employees to undergo weekly testing and wear face coverings in public spaces at the workplace. All employees must be fully vaccinated by January 4, 2022, after which point all unvaccinated employees must wear face coverings and provide weekly Covid-19 test results. Employers are not required to pay for the cost of testing (unless it is otherwise required by state law), but may choose to do so.

Employers must determine the vaccination status of each employee, keep records of their vaccine status, and maintain a roster of all vaccinated employees. The ETS provides a list of acceptable forms of proof of vaccination status, including Covid-19 vaccination cards and records of immunization from a healthcare provider or pharmacy. If the employer has already gathered vaccine status records from employees, they do not need to reverify or obtain new proof that meets the standards as stated in the ETS. The employer must also maintain records of all test results provided by employees.

Effective December 5, 2021, all covered employers must provide up to 4 hours of paid time off for their employees to get vaccinated, which includes travel time. A "reasonable" amount of paid time off is also required for recovery due to vaccine side effects. No paid time is required for an employee who tests positive for Covid-19. Any employee who does test positive for Covid-19, regardless of vaccination status, must be immediately removed from the workplace. The employee may not return to the workplace until guidelines listed in the ETS for return to work are met.

The OSHA ETS for large private employers joins two other federal vaccination mandates for federal contractors and recipients of Medicaid and Medicare funds. The deadline for employers' compliance with all three mandates is January 4, 2022. However, the OSHA ETS does not apply to employers who must comply with the stricter federal contractor and CMS mandates that do not include a testing option for unvaccinated employees who do not qualify for medical or religious exemptions.

For more information, visit www.lewisroca.com or contact Melanie Pate at mpate@lewisroca.com, Yalda Godusi at ygodusi@lewisroca.com, or Katie Derrig at kderrig@lewisroca.com.

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