The Biden Administration published the Occupational Safety and Health Administration’s (OSHA) emergency temporary standard (ETS) for COVID-19 vaccination and testing mandates for businesses with 100 or more employees on November 5, 2021.

This mandate states that all employers of 100 or more employees, at any time during the effective dates of the ETS, require all of their employees to be either fully vaccinated or subject to weekly COVID-19 testing. Employers covered by other federal mandates (federal contractors covered by Safer Federal Workforce Guidance, healthcare employers covered by the CMS guidelines or healthcare employers covered by the June 10, 2021 ETS) are not covered by this ETS.

How to count employees for the 100 threshold:

- Employees should be counted firm-wide or corporate-wide, not on a location basis.
- Part-time, seasonal, temporary, remote and minor workers are all included in the 100 employee threshold.
- Independent contractors are not included in the 100 employee threshold.
- On multi-employer worksites, each company would only count their employees, not other employers’ workers.
- Employees of staffing agencies would be counted as an employee of the staffing agency.

Most aspects of the ETS must be in place by December 6th. By December 6th employers must:

- Establish a policy on vaccination.
  - The employer must decide whether they will require vaccination of all employees or if they will set up a process for vaccination or testing for employees.
- Determine vaccination status of each employee and obtain acceptable proof of vaccination.
  - Acceptable proofs of vaccination are:
    - Record of immunization from healthcare provider or pharmacy.
    - Copy of the COVID-19 Vaccination Record 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 date, type and name of healthcare provider who administered the vaccine.
- Maintain records and roster of vaccination status for each employee.
  - The records and roster of vaccination status must be maintained as confidential medical records.
  - The records and roster of vaccination status must be retained the entire time the ETS is effective.
- Provide support for employee vaccination.
  - Employers will be required to give paid time off for the actual time it takes to receive each dose, up to four hours.
  - Employers are required to provide reasonable paid sick leave to employees to recover from side effects of the vaccine.

FOR ADDITIONAL QUESTIONS, PLEASE CONTACT:
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Provide each employee information about the ETS:
- Workplace policies and procedures;
- Vaccination efficacy, safety and benefits;
- Protections against retaliation and discrimination;
- Laws that provide for criminal penalties for knowingly supplying false documentation.

Ensure employees who are not fully vaccinated wear face coverings when indoors or when occupying a vehicle with another person for work purposes.
- Exceptions are when alone in a fully enclosed room, when eating or drinking, when wearing a respirator or facemask, when infeasible or when it creates a greater hazard.
- Exceptions are also made for medical reasons or for sincerely-held religious beliefs.

Require employees to promptly provide notice of positive COVID-19 test or COVID-19 diagnosis.
- Employers must have a process in place for employees to notify their employer of a positive test.
- Employers must keep records of all test results from employees.

Remove any employee who received a positive COVID-19 test or COVID-19 diagnosis.
- Employers must have a process in place for removal of the employer from the workplace.

Report work-related COVID-19 fatalities to OSHA within 8 hours and work-related in-patient hospitalizations within 24 hours.

Employers must make certain records available.
- Upon request, must provide an employee vaccination documentation and/or test results by the end of the next business day.
- Aggregate data regarding vaccination status of the entire workplace must be made available to employees and unions.
- Upon request from OSHA, provide copies of vaccination policy within four business hours.
- Upon request from OSHA, provide copies of all other documentation the employer is required to keep under the ETS by the next business day.

Employees must have their last dose of vaccine by January 4, 2022.
- Two doses of Pfizer or Moderna.
- One dose of Johnson & Johnson.
- Employers must collect and retain documentation of vaccination.

If an employer gives the option of weekly testing, all unvaccinated employees will need to begin weekly testing starting January 4, 2022.
- Employee tests cannot be self-administered unless observed by the employer or a telehealth proctor.
- If an employee receives a positive test, they must be immediately removed from the workplace.
- An employer is not required to cover the cost of employees’ tests or the mileage to go to the test.
- An employer may need to pay for tests offered as reasonable accommodations to individuals with disabilities or religious beliefs that make them ineligible for the vaccine.

OSHA released a summary of the requirements of the ETS and an FAQ. Those documents can be accessed using the below links:

SUMMARY: COVID-19 Vaccination and Testing ETS
Emergency Temporary Standard: Frequently Asked Questions

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