

COVID-19

OSHA RELEASES ETS REQUIRING LARGE EMPLOYERS TO MANDATE VACCINES OR PROVIDE WEEKLY TESTING

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UPDATE (11/08/2021): Court stays OSHA Temporary Standards for Large Employers - View the issue alert [here](#)

Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

Today the Occupational Safety and Health Administration (“OSHA”) released its Emergency Temporary Standard (“ETS”) requiring employers with 100 or more employees to ensure all employees to either be (1) fully vaccinated, or (2) produce a negative test result on at least a weekly basis before coming to work.

Employers must implement vaccine policies, leave, and masking requirements by **December 5, 2021**, and must implement testing requirements by **January 4, 2022**. Here are some of the ETS’s general requirements:

- The ETS applies to employers with 100 or more employees on a company-wide basis, regardless of the number of employees at a particular work site.
- Employers must develop and enforce either a (1) mandatory COVID-19 vaccination policy or (2) establish and enforce a policy allowing employees to elect either to get vaccinated or to undergo weekly COVID-19 testing and wear a mask.
- The ETS provides protections for employees who are unable to be vaccinated due to a disability or a sincerely held religious belief
- Employers can require employees to pay for the cost of weekly testing under certain circumstances.
- Employers must determine the vaccination status of each employee, obtain proof of vaccination, and maintain a roster of each employee’s vaccination status.
- Employers must provide paid time off for employees to receive the vaccine and recover from any side effects from the vaccine.

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Similar to the previous healthcare ETS, this ETS will expire in six months. An ETS is valid until superseded by a permanent standard, which OSHA must promulgate within six months of publishing the ETS. If OSHA wishes to extend the obligations, OSHA must promulgate a permanent standard before May 5, 2022.

This ETS is likely to face legal challenges now that it has been issued.

As a reminder, the Biden Administration's COVID-19 Action Plan also included vaccine requirements for federal contractors and healthcare facilities. The Centers for Medicare & Medicaid Services ("CMS") also released an interim final rule with comment today outlining the staff vaccination requirements for Medicare- and Medicaid-certified providers and suppliers to participate in Medicare and Medicaid programs. Please stay tuned for an issue alert related to CMS' interim final rule.

Importantly, the OSHA ETS does not apply to employers that must already comply with the federal contractor vaccine mandates or to employers who are currently complying with the requirements of the previous Healthcare ETS.

Contact legal counsel to prepare a comprehensive action plan to ensure your workforce is prepared to comply with the OSHA ETS before December 5, 2021.

FOR MORE INFORMATION

If you have questions or want more information regarding the requirements for large employers to mandate vaccines or provide weekly testing, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Don Berner** at 316.291.9738 or dberner@foulston.com or **Morgan Geffre** at 316.291.9577 or mgeffre@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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