



A Leavitt Group Company

COVID-19 Employer Resources

GBS Compliance

Steps to Take Now to Comply with OSHA's ETS

On Nov. 4, 2021, the Occupational Safety and Health Administration (OSHA) announced a federal Emergency Temporary Standard (ETS) to address the grave danger of COVID-19 infection in the workplace. Affected employers will be required to comply with most provisions of the ETS by Dec. 6, 2021, and with its testing requirements by Jan. 4, 2022. Affected employers include private employers with 100 or more employees (firm or company-wide count). State plans will have 30 days to adopt the federal ETS or implement their own vaccination standard.

Several groups opposing the rule filed actions in various federal courts in an effort to block the rule. On November 6, 2021 the conservative Fifth Circuit Court of Appeals was the first to act by issuing a temporary “stay” that blocked the ETS until it could more closely examine the legality of the rule. The same court issued an extended stay on November 12, 2021. On November 16, 2021 the Sixth Circuit Court of Appeals was selected by lottery to assess the consolidated challenge against the executive order. This court is also very conservative. Either way, the U. S. Supreme Court will likely have the final say.

What Should Employers Do?

The GBS Compliance Team created this checklist to help you determine steps you can take now to comply with the OSHA ETS. We recommend becoming familiar with the requirements of the ETS and using this checklist to prepare to implement those requirements if the stay is lifted and the emergency rule is revived. Given the details in the ETS, failure to begin preparing could be a risky proposition. If the ETS is upheld and cleared for enforcement, and the current compliance deadlines in December and January do not change, you would have little time to act. Even if the deadlines were extended, you may not be given significantly more time to comply.

OSHA's Emergency Temporary Standard: Steps to Take Now to Comply



1. Determine if my organization is covered under the ETS

- › GBS Compliance Summary “*Determining the Number of Employees*”
[Download Summary](#) ↓
- › Review [OSHA FAQs](#) 2A1 - 2A12
- › GBS Compliance Summary “*OSHA's Mandate-or-Test Emergency Rule Gets Sent to White House for Final Review: How Employers with 100+ Employees Can Avoid Vaccine Confusion*”
[Download Summary](#) ↓
- › **Tip:** There are separate more specific vaccine rules for federal contractors and certain healthcare providers that may apply. These are still in effect and have no stay. Read GBS summary “*OSHA's Vaccine ETS Encounters More Obstacles - Next Steps for Employers with 100+ Employees*” and contact us for more information.
[Download Summary](#) ↓



2. Determine which employees are covered under the ETS

- › Even if the ETS applies to a particular employer, the ETS requirements do not apply to employees:
 - Who do not report to a workplace where other individuals such as co-workers or customers are present;
 - While working from home (remote work); or
 - Who work exclusively outdoors.
- › Read GBS Summary “*Determining the Number of Employees*” under “Employee Exemptions” section
[Download Summary](#) ↓
- › Review [OSHA FAQ](#) 2B which defines work done exclusively outdoors

OSHA's Emergency Temporary Standard: Steps to Take Now to Comply



3. Establish a Policy

- › Decide whether to establish:
 - 1) A mandatory vaccination policy
[Download OSHA Template “Mandatory Vaccination”](#) ↓
 - or -
 - 2) A vaccination or weekly testing policy
[Download OSHA Template “Vaccination, Testing, & Face Covering”](#) ↓
- › Review [OSHA FAQs](#) 3A - 3J
- › GBS “reasonable accommodation” templates
 - Request for Medical Exemption / Accommodation
[Download](#) ↓
 - Request for Religious Exemption / Accommodation
[Download](#) ↓



4. Distribute your policy and these required notices

- › CDC & OSHA Notices - COVID-19 Vaccination and Testing ETS, *Key Things to Know About COVID-19 Vaccines, Workers' Rights under the COVID-19 Vaccination and Testing ETS, Information for Employees on Penalties for False Statements and Records, Reporting COVID-19 Fatalities and In-Patient Hospitalizations to OSHA*
[Download Packet](#) ↓
- › For optional employee communication templates, download GBS Employer Templates:
 - COVID-19 Vaccination Mandate Letter to Employees
[Download](#) ↓
 - Employee Letter - Vaccination Exemption Approved
[Download](#) ↓
 - Employee Letter - Vaccination Exemption Denied
[Download](#) ↓

OSHA's Emergency Temporary Standard: Steps to Take Now to Comply

5. Determine how to enforce your policy

Companies have the option to contract with a vendor or to manage these ETS requirements in-house.

Determine employee vaccination status and maintain records

- › Obtain proof of vaccination
 - Information to collect includes employee name, vaccine status (i.e. full, partial, exemption, no vaccine due to not satisfying requirements of submitting proof)
 - Review [OSHA FAQs](#) 4A - 4H
- › Maintain record of vaccination status
 - Optional - GBS Employer Vaccination Tracking Sheet Template [Download](#) ↓
 - GBS has negotiated preferred pricing with a few trusted vendors offering comprehensive vaccine management and testing solutions to help you comply with OSHA's ETS. Please contact your GBS Broker team for details. We also recommend checking with your benefits admin or payroll vendor as many of these companies offer solutions.
 - **Tip:** We recommend using only one identified HR person to collect this information. This confidential information should not be shared with managers and supervisors or other employees and should be kept in the secure employee **medical** file, not individual employee file.

Support employee vaccination with PTO

- › Provide up to 4 hours PTO to receive each primary vaccine dose.
- › Provide up to 2 days PTO per primary vaccine dose to recover, if side effects are present.
- › Review [OSHA FAQs](#) 5A - 5G

Testing for employees who are not fully vaccinated

- › If you opted to offer weekly testing in your vaccination policy, ensure each employee not fully vaccinated is tested for COVID-19 at least weekly (if in the workplace at least once a week) or within 7 days before returning to the workplace (if more than a week away from workplace).

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OSHA's Emergency Temporary Standard: Steps to Take Now to Comply

5. Determine how to enforce your policy (continued)

- Review [OSHA FAQs](#) 6A - 6P
- If you will be managing testing in-house, see GBS summary “*OSHA COVID-19 ETS: Managing COVID-10 Testing In-House*”
[Download](#) ↓

Employee notification of positive COVID-19 test and removal of employee

- › Make sure employees understand they must provide prompt notice when they receive a positive COVID-19 test or are diagnosed with COVID-19.
 - Remove any employee from the workplace who received a positive COVID-19 test and keep them removed until they meet criteria for returning to work.
Note: *this applies to all employees, regardless of vaccination status.*
 - Review [OSHA FAQs](#) 7A - 7I

Ensure each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes.

- › Review [OSHA FAQs](#) 8A - 8D

6. Consider potential legal ramifications for non-compliance

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,653 per violation
Failure to Abate	\$13,653 per day beyond the abatement date
Willful or Repeated	\$136,532 per violation

[OSHA Penalty Chart](#)

