



GBS Compliance

OSHA Issues COVID-19 Vaccination & Testing Emergency Temporary Standard (ETS)

On November 4, 2021, the DOL's Occupational Safety and Health Administration (OSHA) announced a COVID-19 vaccination and testing Emergency Temporary Standard (ETS) which takes effect today, November 5, 2021. The ETS is intended to preempt any State or local requirements that ban or limit an employer from requiring vaccination, face covering, or testing. The ETS applies to employers with 100 or more employees in its total workforce.

Along with the ETS release, OSHA responds to several anticipated frequently asked questions through a very robust set of [FAQs](#). We strongly recommend taking a moment to read and digest them. The FAQs contain very valuable information including, but not limited to: how to calculate employer size, how the ETS impacts state laws, what to include in a vaccination policy, how to gather vaccination status proof, as well how to address sick leave, vaccination and masking issues.

The ETS sets two deadlines, one 30 days from the ETS release which is December 5, 2021, and one 60 days from the ETS release which is January 4, 2022. Affected employers will be required to comply with most provisions of the ETS by the first deadline of December 5, 2021 and with its testing requirements by January 4, 2022. The general requirements for each deadline are outlined below but note additional information can be found in the above-referenced FAQ as well as the [shortened user-friendly three-page OSHA summary](#).

December 5, 2021

Employers must ensure all unvaccinated employees are masked and must pay employees for the time it takes to get vaccinated

- While the testing requirement for unvaccinated workers will begin after January 4th, employers must be in compliance with all other requirements by December 5, 2021 such as providing paid time for employees to get vaccinated and masking for unvaccinated workers

- Employers must provide up to four hours of paid-time (each dose) for their employees to get vaccinated and, if needed, sick leave to recover from side effects (that keep them from working) following each dose.
- Employers must ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes, except in certain limited circumstances.

Additional employer requirements include providing employees the following: (1) information about the requirements of the ETS and workplace policies and procedures established to implement the ETS; (2) the CDC document “[Key Things to Know About COVID-19 Vaccines](#)”; (3) information about protections against retaliation and discrimination; and (4) information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.

January 4, 2022

Employers must ensure their employees are vaccinated by January 4th and/or require unvaccinated employees to produce a negative test on at least a weekly basis:

- Employers must determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain records of each employee’s vaccination status, and maintain a roster of each employee’s vaccination status.
- After January 4, 2022 employers must:
 - Ensure that any employees who have not received the necessary shots begin producing a verified negative test, which means employers must ensure that each employee who is 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 work (if away from the workplace for a week or longer).
 - If employees work exclusively remote or exclusively outdoors, weekly testing and/or vaccination is not required.
 - The ETS does not require employers to pay for any costs associated with testing. However, employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements. Note that nothing prohibits employers from voluntarily assuming the costs associated with testing.
 - Remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed health care provider
 - Employers must: (1) require employees to promptly provide notice when they receive a positive COVID19 test or are diagnosed with COVID-19; (2) immediately remove any employee from the workplace, regardless of vaccination status, who received a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider; (3) keep removed employees out of the workplace until they meet criteria for returning to work.

Effective Period and Penalties

Under the OSH Act, an emergency temporary standard remains in effect for six months. Then, OSHA must replace it with a permanent standard.

OSHA may fine a covered employer that does not comply with the ETS up to \$13,653 for each violation of the standard. Employers that willfully or repeatedly violate the standard can be fined up to \$136,532. However, the Build Back Better Act, if it becomes law, would raise maximum fines for all OSHA rules to \$70,000 for serious violations and \$700,000 for willful or repeat violations.

Watch for more information in the upcoming weeks from GBS. We will continue to provide support, context, and guidance to help our clients that are subject to this rule and navigate it appropriately.

November 2021

This summary is not intended to be exhaustive nor should any discussion or opinions be construed as professional advice