



OSHA Emergency Temporary Standard Regarding COVID-19 Vaccine Mandate

The Occupational Safety and Health Administration (“OSHA”) issued an emergency temporary standard (“ETS”) concerning the federal COVID-19 vaccine mandate on November 5, 2021. The ETS takes effect immediately, however, employers will have 30 days to comply with most requirements and 60 days to comply with the testing requirements discussed below. Importantly, the vaccine mandate applies to unvaccinated employees of large employers (100 or more employees) by strongly encouraging vaccination. This ETS, however, does not apply to the vaccination mandate for federal contractors or subcontractors or healthcare services subject to the Healthcare ETS.

This ETS preempts any State or local requirements that ban or limit an employer from requiring vaccination, face covering, or testing. Accordingly, covered employers must develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that decide to adopt a policy requiring employees to either get vaccinated *or* undergo regular COVID-19 testing *and* wear a face covering at work.

In summary, this ETS requires employers to do the following:

1. Determine the vaccination status of each employee, by obtaining acceptable proof, and maintain records and a roster of each employee’s vaccination status.
2. Support an employee’s decision to get a vaccination by providing reasonable time, including up to four (4) hours of paid time to receive each dose, and reasonable time and paid sick leave to recover from side effects from the vaccination.
3. Ensure each worker who is not fully vaccinated is tested for COVID-19 at least weekly (if the worker is in the workplace at least once a week) or within 7 days before returning to work (if the worker is away from the workplace for a week or longer). **Employers are not required to pay for testing or face coverings.**
4. Require employees to promptly notify their employer when they test positive for COVID-19 or receive a COVID-19 diagnosis. Employers must then remove the employee from the workplace, regardless of vaccination status.
5. Ensure that, in most circumstances, each employee who has not been fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes.

6. Provide employees with information about: (i) the requirements of the ETS and workplace policies; (ii) the CDC document “Key Things to Know About COVID-19 Vaccines”; (iii) information about protections against retaliation and discrimination; and (iv) information about laws that provide for criminal penalties for supplying false statements or documentation.
7. Report work-related COVID-19 fatalities to OSHA within eight (8) days of learning about them, and work-related COVID-19 hospitalizations within 24 hours of learning.

To find out more about these requirements, religious and disability accommodation requests, and other legal requirements concerning the COVID-19 vaccine mandate, please contact Loren Prizant at 502-625-2850 or lprizant@middletonlaw.com.

* Summary information obtained from the US Department of Labor, Occupational Safety and Health Administration.