

OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard



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As a part of the Biden Administration's "Plan Out of the Pandemic," the Occupational Safety and Health Administration (OSHA) was tasked with developing a rule to encourage vaccinations among the workforce in the form of an emergency temporary standard (ETS). The [COVID-19 Vaccination and Testing ETS](#), filed on November 4, 2021, requires employers with over 100 employees to ensure all employees are either vaccinated or submit to weekly COVID-19 testing. Although the ETS becomes effective immediately, employers have 30 days to comply with all provisions except for those under subsection (g) related to testing of unvaccinated employees. The compliance date for subsection (g) is 60 days from the filing date of November 4, 2021. Additionally, Cal/OSHA is now required to implement an equally protective rule within 30 days. It will be important to continue to monitor Cal/OSHA's corresponding rule to see if it decides to issue a stricter standard than that imposed by the ETS.

As a result of the ETS, businesses with over 100 employees should plan (at a minimum) to require their workforce to either be fully vaccinated or submit to weekly testing within the applicable compliance dates. When developing their plan, employers should keep in mind that California law requires employers to compensate their employees for time spent performing required tasks (i.e., hours worked), including traveling to/from and waiting for the test or vaccination to be completed. California law also requires employers to reimburse their employees for necessary business expenses. As a result, if an employer allows its employees to undergo weekly testing, it will be required to pay for the employee's time spent waiting to obtain and obtaining the test (but not waiting for results) and the cost of testing. To verify workers are fully vaccinated, employers must obtain and retain a physical or digital copy of an employee's vaccination record (booster shots are excluded). In addition, employers must prepare a roster with the vaccination status of all employees and treat this data as confidential medical information. Additional information may also be found in the [FAQs](#) published by the Department of Labor.

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