



# An Employer's Guide to Preparing for the 2021 OSHA ETS Vaccine Mandate

November 11, 2021

On September 9, 2021, President Biden announced that he ordered OSHA to develop an emergency temporary standard (ETS) requiring private employers with 100 or more employees to mandate that employees either receive one of the three available COVID-19 vaccines or submit to weekly COVID-19 testing. On November 4, 2021, OSHA released an unpublished version of the COVID-19 Vaccination and Testing Emergency Temporary Standard.

## Key dates for compliance:

- December 5, 2021: unvaccinated employees must begin wearing masks or face coverings in the work place
- January 4, 2022: all covered employees must be fully vaccinated or undergo weekly COVID-19 testing

1. Determine if they are a covered employer under the rule. Covered employers have 100 or more employees across all their locations at any point the ETS is in effect.



2. Create a formal written policy requiring mandatory vaccination, which includes deciding if the employer will let employees forego vaccinations in lieu of weekly COVID-19 testing and wearing mask when around coworkers.



A. Develop and communicate the policy for unvaccinated employees to wear face coverings while in the workplace if weekly testing is going to be an option for unvaccinated employees.



3. Determine which employees are fully vaccinated and have vaccinated employees submit proof of vaccination status. Employers must maintain a record of each employee's vaccination status, preserve and save a copy of acceptable proof of vaccination and maintain a roster of each employee's vaccination status. Information must be kept in a confidential manner.



4. Create a policy for and communicate to employees that they will provide up to four hours of paid time off (PTO) for employees to become vaccinated if they are not already and paid sick leave if they experience vaccine-related side effects.

5. Develop and communicate the process for employees to notify their employer of a positive COVID-19 test and determine and communicate the process of removing individuals from the workplace who learn they tested COVID-19 positive.



6. Employers must inform each employee, in a language and at a literacy level the employee understands, about:



A. The requirements of the ETS as well as any employer policies and procedures established to implement this section,



B. COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated,

C. Protections against retaliation and discrimination and



D. Laws that provide for criminal penalties for knowingly supplying false statements or documentation. The following document must be provided with their policy: [Key Things to Know About COVID-19 Vaccines](#).



7. Develop a disciplinary process for:

A. Employees who refuse to provide their vaccination status.

B. Unvaccinated employees who refuse to undergo weekly testing/ wear a face covering if the employer offers that as an option.

C. Employees who fail to notify an employer of a positive COVID-19 test.

D. Employees who submit false information regarding their vaccination status or COVID-19 test results.

E. Potentially escorting employees from the premises if they do not conform with policies or if they let the employer know that they have been exposed to COVID-19.



8. Retain copies of all policies, processes, notices, vaccination rosters, and other related documentation in the event they are requested to provide it to OSHA. All information must be kept in a confidential manner.



9. Watch for news on the variety of federal court cases challenging the vaccine mandate. It is anticipated that a court of final opinion will not issue its ruling until closer to key compliance deadlines, so employers should be prepared to implement the ETS until a court of final opinion rules otherwise.

If you want more information about the vaccine mandates, read our [summary and expanded guidance](#) on our website.