

# LEGAL UPDATE

## OSHA Releases Vaccination and Testing ETS

On Nov. 4, 2021, OSHA [announced](#) a [COVID-19 vaccination and testing emergency temporary standard](#) (ETS) to address the grave danger of COVID-19 infection in the workplace. The ETS affects private sector employers with **100 or more employees**.

**On Dec. 17, 2021, the 6th Circuit Court of Appeals [reversed](#) the stay the 5th Circuit ordered on Nov. 12, 2021 to block the ETS. As a result, OSHA has resumed ETS implementation and enforcement nationwide. OSHA will not issue citations before Jan. 10, 2022 (Feb. 9 for testing requirement) to employers that make reasonable, good faith efforts to comply. ETS opponents have already filed an appeal with the U.S. Supreme Court challenging the 6th Circuit decision. Employers subject to the ETS should monitor legal developments closely and consider what measures they would need to adopt if the Supreme Court upholds the ETS.**

### Vaccination and Testing Requirements

The ETS requires employers to develop, implement and enforce a mandatory COVID-19 vaccination policy; or create a policy allowing employees to choose to get a vaccination or wear a face covering in the workplace and have weekly COVID-19 testing done. As a result, employers will need to determine the vaccination status of each employee, obtain acceptable proof of vaccination and keep a roster of each employee's vaccinations status.

Employees who are not fully vaccinated must be tested weekly or within seven days before returning to work. 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 or other collectively negotiated agreements. Employers will also need to immediately remove any employee who reports a positive COVID-19 test or diagnosis until return to work criteria are met.

### Paid Leave

Employers are also required to allow reasonable time—including up to four hours of paid time—to receive a primary vaccination dose. Reasonable time and paid sick leave are also required to recover from any side effects of the vaccination.

### ETS Exemptions

The requirements of the ETS do not apply to:

- Employees who do not work with other individuals present;
- Employees when they are working from home;
- Employees who work exclusively outdoors;
- Those covered under the Safer Federal Workforce Task Force;
- Those covered by the health care ETS;
- Employers that have fewer than 100 employees; and
- Public employers in states without State plans.

***Affected employers must develop, implement and enforce a mandatory COVID-19 vaccination policy.***



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