



November 5, 2021

Over 100 Employees? 29 Days Left to Comply with First Phase of Federal Employee Vaccination Mandate

OSHA Fines up to \$13,000 Per Day Possible for Violators

Yesterday, the Biden Administration (OSHA) released an edict that forces employers with 100 or more employees be fully vaccinated no later than January 4, 2022. The only alternative for employers with over 100 employees is to implement a policy mandating weekly nonvaccinated employee testing, as well as mandatory masking for those employees.

Unfortunately, the rule will apply to all employers with 100 or more employees regardless of whether those employees work full- or part-time schedules. It will also apply to any employer that reaches that 100-employee threshold during the effective period of the rule and remains in effect - even if a covered employer drops below that threshold for any reason.

Covered employers have until December 4 (29 days from today) to create and implement a written policy requiring vaccination or testing, though the requirement to enforce won't kick in for 60 days (January 4th). Employers must provide all workers with copies of that written policy and a copy of the U.S. Centers for Disease Control's (CDC) "[Key Things to Know About COVID-19 Vaccines](#)" document. **The mandate doesn't apply to employees who work remotely or exclusively outdoors.** Over-the-counter tests will **not** satisfy the requirement. Only tests conducted or observed by appropriate laboratories or health-care professionals will be acceptable under the ETS.

To encourage vaccination, employers will be required to provide up to four hours of **paid** time off for employees to get vaccinated against COVID-19, as well as a reasonable amount of paid sick leave to be used to recover from any side effects. While the rule doesn't specify what a "reasonable amount of time" is, OSHA suggests two workdays. Companies, however, won't be made to pay for weekly testing for their unvaccinated employees under the OSHA rule, but may be required to pay for tests under other laws or collective bargaining agreements.

For the unvaccinated, reporting of a negative test result is required every seven calendar days, or in the case of a primarily remote employee, within seven calendar days before they would come into a workplace setting with other employees. Additionally, any unvaccinated employee, regardless of testing status, will be required to wear a face covering while at work. While vaccinated employees will not face such a requirement, OSHA strongly encourages universal face coverings regardless of vaccination status.

Employers are further required to obtain and keep vaccination and testing records of their employees as long as the ETS is in place. Verbal declarations of vaccination status or test results will not comply with this requirement. Employers must keep a roster of all employees readily showing each worker's vaccination status and provide that roster to OSHA if necessary. Employers are required to give two kinds of exemptions to the vaccine mandates: medical and religious. Exemptions for people with certain medical conditions are protected under the Americans With Disabilities Act. Many employers require people to present a doctor's note to qualify for this exemption. Exemptions for people with sincerely held religious beliefs are protected under Title VII of the Civil Rights Act. So far, no major religion has barred its members from taking the coronavirus vaccine.

Finally, companies that choose not to comply with the rule may be subject to fines. OSHA's penalties are up to \$13,653 per **each** serious violation.

NACS made substantial contributions to this article.

SBLC Webinar on OSHA's New Vaccine or Test Rule: What Employers Need to Know

From EMA

The Small Business Legislative Counsel (SBLC) will host a webinar next Wednesday, Nov 10, 2021 at 12pm EST.

[CLICK HERE TO REGISTER NOW!](#)

In this webinar, SBLC Strategic Policy Director and Paley Rothman employment law attorney Jessica Summers will discuss the new OSHA emergency rule requiring employers with 100 or more employee to mandate that their employees get vaccinated or submit to regular COVID-19 testing.

This live webinar will be open to all EMA state associations and its members, free of charge. When registering, please tell your members to type "EMA" at the bottom of the registration page when asked: What association invited you? After registering, you will receive a confirmation e-mail containing information about joining the webinar.

Space is limited and available on a first come first serve basis, but we will be recording the webinar and a copy will be made available to any overflow registrants.