

COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS)

December 2021

Background

OSHA has determined that:

- Many employees in the U.S. who are not fully vaccinated against COVID-19 face grave danger from exposure to SARS-CoV-2 in the workplace
- An ETS is needed to protect employees through the most effective and efficient workplace control available - vaccination

Purpose of the ETS

- Establish minimum vaccination, vaccination verification, face covering, and testing requirements to address grave danger of COVID-19 in the workplace
- Preempt state and local laws that interfere with the employer's authority to require vaccination, face covering, or testing

ETS Effective Dates

- Effective immediately upon publication in Federal Register
- Compliance dates:
 - January 10, 2022: Provisions other than testing for employees who have not completed the entire primary vaccination
 - February 9, 2022: Testing for employees who have not received all doses required for a primary vaccination

Scope and Application of § 1910.501

Applies to

- General Industry
- Shipyard Employment
- Marine Terminals
- Longshoring
- Construction
- Agriculture

Employers Covered

- All employers with ≥ 100 employees firm or corporate-wide at any time this section is in effect

Where § 1910.501 *Does Not* Apply

Workplaces Not Covered

- Workplaces covered under Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
- Settings where any employee provides healthcare services or healthcare support services when subject to the requirements of § 1910.502

Employees Not Covered

- Not reporting to a workplace where coworkers or customers are present
- Working from home
- Working exclusively outdoors

Select Definitions

- COVID-19 test
- Fully vaccinated

(d) Employer Policy on Vaccination

- Must establish, implement, and enforce a mandatory vaccination policy
- Requires all existing and new employees to be fully vaccinated other than employees with medical contraindications, for whom medical necessity requires a delay in vaccination, or who are legally entitled to a reasonable accommodation (disability, sincerely held religious belief)
- In writing
- EXEMPTION – Mandatory vaccination policy not required if employer has a written policy permitting each employee to choose between vaccination or providing proof of regular testing and wearing a face covering

(e) Determination of Vaccination Status

- Required to determine the vaccination status of each employee
- Failure to provide acceptable proof – employee treated as not fully vaccinated
- Required to preserve acceptable proof of vaccination and roster of each employee's vaccination status
- Proof of vaccination and roster considered to be and maintained as employee medical records (29 CFR 1910.1020) while the ETS in effect

Acceptable Proof of Full or Partial Vaccination

- Record of immunization from a health care provider or pharmacy
- Copy of COVID-19 vaccination record card
- Copy of medical records documenting the vaccination
- Copy of immunization records from a public health, state, or tribal immunization information system
- Copy of other official documentation containing type of vaccine, date(s) of administration, and name of health care professional or clinic administering the vaccine
- Signed and dated attestation ONLY where employee has lost or is otherwise unable to produce other acceptable proof

Employer Determination of Vaccine Status Prior to ETS Effective Date

- EXEMPTION – If employer has asked employees about their vaccination status prior to the effective date of the ETS AND retained records of employee responses, the employer is
 - NOT required to re-evaluate vaccination status for fully vaccinated employees
 - Permitted to use any record of response, even if it is not listed as acceptable proof under the ETS
 - Required to create a roster of each employee’s vaccination status
 - Required to maintain proof of vaccination and roster as employee medical records (29 CFR 1910.1020) while the ETS is in effect

(f) Employer Support for Vaccination

- Up to 4 hours paid time for each primary vaccination series dose – includes travel time
- Reasonable amount of paid sick leave to recover from any side effects experienced following each primary vaccination series dose

(g) Testing Requirements for Employees Who Are Not Fully Vaccinated

Each employee who is not fully vaccinated and:

1. Reports at least once every 7 days to a workplace where coworkers or customers are present
 - Must be tested at least once every 7 days and provide test result documentation
 - Must be removed from the workplace for not providing test result documentation; return upon providing test result documentation
2. Does not report during a period of ≥ 7 days to a workplace where coworkers or customers are present
 - Must be tested within 7 days prior to returning to workplace
 - Must provide documentation of test result upon return to the workplace

Costs of Testing

- Employer not required to pay for any costs associated with testing
- Employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements
- Employer not prohibited from paying for costs associated with testing

Exemption from Testing

- Employers are prohibited from requiring regular COVID-19 testing of employees who are not fully vaccinated for 90 days after
 - Positive COVID-19 test, *or*
 - Positive diagnosis by a licensed health care provider

Records of Test Results

- Test results considered to be employee medical records and maintained as such records (29 CFR 1910.1020) while the ETS is in effect

(h) Employee Notification to Employer of COVID-19 Positive Status and Removal

- Employers must require each employee to promptly notify the employer that they are COVID-19 positive
- The employer must immediately remove the employee from the workplace
- Return to work allowed
 - When an employee receives a negative result on a confirmatory COVID-19 NAAT following a positive result on a COVID-19 antigen test, *or*
 - When CDC criteria in "Isolation Guidance" is met, *or*
 - When recommended by a licensed health care provider
- Employers are not required to provide paid time for removal
- Paid time may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements

(i) Face Coverings

- Employers must ensure employees who are not fully vaccinated wear a face covering when
 - Indoors
 - When occupying another vehicle with another person for work purposes
- Exceptions
 - When alone in a fully enclosed room with door closed
 - When eating or drinking or for safety and security identification purposes
 - When wearing respirators or facemasks
 - Where use of face coverings is infeasible or creates a greater hazard

Face Coverings - Employers

- Must ensure proper use of face coverings
 - Fully cover nose and mouth
 - Replaced when wet, soiled, or damaged
- Must permit employees to
 - Voluntarily wear face coverings or facemasks unless doing so would create a risk of serious injury or death
 - Wear respirators instead of face coverings whether required or not (must comply with § 1910.504)
- May provide respirators to employees (must comply with § 1910.504)
- Must not prohibit wearing of face coverings by customers or visitors

(j) Information Provided to Employees

- Appropriate language and literacy level
- Contents
 - Requirements of § 1910.501
 - Employer policies and procedures
 - COVID-19 vaccine efficacy, safety, and benefits by providing the CDC document, “[Key Things to Know about COVID-19 Vaccines](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html),” available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>
 - Non-discrimination requirements of Section 11(c) and 29 CFR 1904.35
 - Prohibitions of 18 U.S.C. § 1001 and Section 17(g) of the OSH Act providing for criminal penalties associated with knowingly supplying false statements or documentation

(k) Reporting COVID-19 Fatalities and Hospitalizations to OSHA

- Work-related fatality – within 8 hours of learning of the fatality
- Work-related in-patient hospitalization – within 24 hours of learning of the in-patient hospitalization
- Follow instructions in § 1904.39 except for 39(a)(1) and (a)(2) and (b)(6)

(I) Availability of Records

- Individual vaccine information and test results - to that employee and anyone having written consent, by the end of next business day after request
- Aggregate number of fully vaccinated employees at a workplace and the total number of employees at that workplace –
 - To any employee or employee representative, by the end of next business day after request
 - To the Assistant Secretary, within 4 business hours of request
- Employer’s written vaccination policy – to the Assistant Secretary, within 4 business hours of request
- All other records and documents – to the Assistant Secretary, by the end of next business day after request

Additional Information

Visit the OSHA website - www.osha.gov/coronavirus

- *Fact Sheets*
- *Compliance assistance materials*
- *FAQs*
- *Enforcement policies and information*



50SHIA
Protecting America's Workforce