



COMPLIANCE BULLETIN

OSHA ISSUES EMERGENCY TEMPORARY STANDARD REGARDING COVID-19 VACCINE MANDATE

On November 5, 2021, the Occupational Health and Safety Administration (OSHA) released the emergency temporary standard (ETS) requiring businesses with at least 100 employees to mandate employee vaccinations or wear masks and be tested for COVID-19 weekly. Employers subject to the vaccine mandate must begin to create a written vaccination policy and prepare to distribute the policy, as well as any other required notices and disclosures, to employees within 30 days after the effective date. Obligations related to testing for unvaccinated / not fully vaccinated employees require compliance within 60 days of the effective date.

Highlights of the ETS Include:

- Employees must be vaccinated by January 4, 2022, and employers must retain proof of vaccination for all vaccinated employees.
- Employees that remain unvaccinated must wear masks and produce a verified negative COVID-19 test to their employer on at least a weekly basis. Per the ETS, employers are not required to cover the costs associated with regular COVID-19 testing.
- Employees with a positive COVID-19 test must be removed from the workplace.
- Employers must provide paid time off for employees to get vaccinated and/or sick pay to employees to recover from symptoms associated with receiving the vaccine. However, the ETS does not require employers to provide paid time off for employees if removed from the workplace due to a positive COVID-19 test or diagnosis.

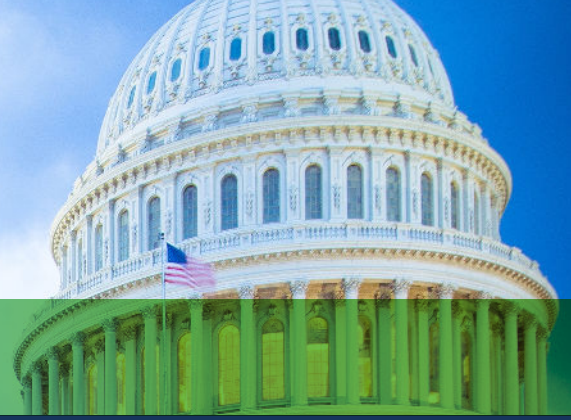
100+ Employee Calculation

To determine whether the employer has 100 or more employees, it must look at the total number of employees employed across the company's locations as of November 5, 2021. This calculation should include both full-time and part-time employees but does not include independent contractors. Remote employees will be part of the total employee headcount calculation, but do not need to comply with the vaccination mandate. However, these employees would need to be tested for COVID-19 within seven days prior to returning to the workplace and provide proof of a negative result prior to returning to the workplace.

OSHA State Programs

For the 22 states with their own OSHA programs, they will have until December 5, 2021, to implement their own mandate "as effective or more effective" than the federal rules. Employers in states with OSHA plans should be mindful of developments to ensure they comply with the appropriate mandate in the event the state adopts a more stringent mandate than the federal mandate outlined by the ETS. Additional guidance will be forthcoming.

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Penalties

The current penalty structure provides penalties up to \$13,653 per violation. Willful violations may result in a penalty up to \$136,532 per violation. The total amount of fines would be dependent on the number of violations.

Expiration Date and Pending Lawsuits

The ETS will expire on or around May 5, 2022, unless it is superseded by a permanent standard. Shortly after the ETS was released several states joined in separate lawsuits in the Fifth and Sixth Circuit Courts of Appeal arguing the ETS is unconstitutional. As of November 6, 2021, the Fifth Circuit stayed the mandate and temporarily blocked its implementation until the court reviews it. It is not immediately clear the implication these lawsuits will have, but additional suits and opposition is anticipated as the mandate's implementation date nears.

Note: Healthcare facilities and federal contractors are subject to separate federal vaccine mandates already in place.

For additional information, see the [White House Fact Sheet](#) and the text of the [OSHA ETS](#).

If you have any questions, please contact us at icomply@ibpllc.com.

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