

ANHPEHRA

ANNUAL LEGAL UPDATE



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Disclaimer

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Introduction

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PROGRAM

OSHA and Emergency Temporary Standard (ETS)

Exemptions to Mandatory Vaccinations

Civility in the Workplace

ETS

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- 100+ Employees – mandate with exemptions or allow for testing
- State Plan – must be at least as effective as the ETS

Status of ETS

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- 5th Circuit Stay
 - Financial burden
 - Potential violation of commerce clause
 - Appellate court being assigned the consolidated petitions today
- OSHA “suspended activities related to the implementation and enforcement of the ETS...”
 - January 4, 2022
- Prepare or Wait-And-See?

ETS Requirements

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- Implement a mandatory COVID-19 vaccination policy, with or without an exception allowing employees to instead undergo weekly COVID-19 testing (beginning Jan. 4, 2022) and wear a face covering at the workplace (beginning Dec. 6, 2021).
- Create a list showing the vaccination status of each employee, obtain proof of vaccination and maintain these records.
- Provide employees with up to four hours of paid time off to receive each primary vaccination dose and paid sick leave to recover from any side effects experienced following each primary vaccination dose. **Booster shots are not covered in this requirement.**
- Ensure that each employee who is not fully vaccinated is tested for COVID-19 at least weekly (if in the workplace at least once a week) or within seven days before returning to work (if away from the workplace for a week or longer).

ETS Requirements

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- Require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19.
- Immediately remove from the workplace any employee, regardless of vaccination status, who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed health care provider, and keep the employee out of the workplace until the return-to-work criteria are met.
- Ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes, except in certain limited circumstances.

ETS Requirements

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- Provide each employee with information they can understand about the requirements of the ETS and the workplace policies and procedures established to implement the ETS; vaccine efficacy, safety and the benefits of being vaccinated by providing the Centers for Disease Control and Prevention (CDC) document Key Things to Know About COVID-19 Vaccines; protections against retaliation and discrimination; and laws that provide for criminal penalties for knowingly supplying false statements or documentation.
- Report work-related COVID-19 fatalities to OSHA within eight hours of the employer learning about them, and work-related COVID-19 in-patient hospitalizations within 24 hours of learning about them.
- Make records available to an employee or an employee representative for examination and copying.

Federal Contractor Vaccine Mandate

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- Compliance date extended to January 18, 2022
- New FAQ
 - Guidance as to employee non-compliance – not immediate termination
 - Can follow own disciplinary rules
 - Denial of exemption – not immediate termination, but timeline for vaccination

Healthcare Facilities – Medicare or Medicaid and Vaccine Mandate

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- Centers for Medicare and Medicaid Services (CMS)
- Interim final rule – all workers fully vaccinated by January 4, 2022.
- Processes for exemptions

Questions?

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MANDATORY VACCINATION AND EXEMPTIONS

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Exemptions

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- Medical – includes pregnancy
- Religious

Medical Exemption – ADA Analysis

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- Medical Basis
 - Disability? - Allergic reaction or immunocompromised conditions
 - Interactive Process: Documentation from health care provider
- ADA:
 - Undue hardship – current circumstances, significant difficulty or expense; or
 - Direct threat to health and safety of others – case-by-case
- Employer should give reason for denial

Religious Exemption – Title VII Analysis

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- Sincerely held religious belief – NOT political, personal, safety or philosophical beliefs
 - Typically assumed
 - Belief can evolve and deviate from group
 - Factors can be considered
 - ✦ Whether the employee has acted in a way that is inconsistent with the claimed belief;
 - ✦ Whether the employee is seeking a benefit or an exception that is likely to be sought for nonreligious reasons;
 - Whether the timing of the request is questionable; and
 - Whether the employee has other reasons to believe that the employee is seeking the benefit for secular reasons.

- Title VII - Undue hardship
 - Courts have found that anything more than a "de minimis"—or trivial—cost can cause undue hardship, and the EEOC noted in its guidance that costs include the risk of spreading the coronavirus and other safety hazards.
 - Consider objective information: whether the employee works outdoors or indoors; works alone or in a group; or has close contact with co-workers, customers or other business partners.

- Employer should give reason for denial


Questions?

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CIVILITY IN THE WORKPLACE

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Civility is not a sign
of weakness.

John F. Kennedy

quote fancy

What is Workplace Incivility?

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- Behaviors with ambiguous intent to harm the target, in violation of workplace norms for mutual respect.
- Uncivil behaviors are characteristically rude and discourteous, displaying a lack of regard for others.

The Incivility Continuum

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- Negative behavior
- Rude comments
- Complaining
- Gossip/rumors
- Verbal Aggression
- Belittling comments
- Intimidation/threats
- Discriminatory comments
- Harassment

Contributors to Incivility

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- Long hours/overwork
- Hot temperament
- Workplace stress
- Inflexibility
- Passive aggression
- Hurt feelings
- Intolerance of individual differences
- Being in a protected position or position of authority

The Costs of Incivility

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- Lost work time and productivity
- Lost employees/high turnover
- Lowered motivation to work
- Health costs due to stress
- Incivility to others

Communicating Civility

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- No interrupting
- Be open-minded
- Be aware of your tone and volume
- Be respectful, even when disagreeing
- Address conflicts in private when possible
- Depersonalize your comments
- Consider that you could be wrong
- Use active listening skills

Words that Promote Conflict

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- You must
- You lied to me
- This is so typical of you
- You always/you never
- The problem is
- If you don't do this, then
- You'll never change
- You're being hysterical/crazy/unreasonable

Questions to Understand Viewpoints

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- Can you tell me what bothered you about what I did?
- What is the most important thing to you in solving this problem?
- Would you be willing to start again right now and do it differently?
- What would it take for you to let go of this conflict and feel that the issue has been resolved?

Listening Actively

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- Listen as if they are a customer
- No interrupting
- Repeat back what you hear to show understanding
- Ask clarifying questions – What did you mean when you said ...
- Don't respond until you have heard and thought about what the other person said

Civil Behavior

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- Be on time for meetings
- Do not do unrelated work in meetings
- Watch your body language
- Apologize when you are in the wrong
- Respect other people's things
- Give positive reinforcement

Being Civil Does Not Mean

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- Rolling over
- Being someone who you are not
- Avoiding conflict when addressing issues is necessary
- Pretending to be nice, then getting back at someone
- Giving up your right to file complaints or ask for help in dealing with difficult people

Manifest a Culture of Civility

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- Have a cooperative approach
- Be aware of underlying needs
- Recognize individual differences
- Leaders model civility for others
- Clearly define expectations for how employees treat each other
- Reward civil behavior
- Encourage stress management

Final Questions?

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Questions?

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