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OSHA Issues COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) for Employers with 100 or More Employees

As most are aware, private employers with 100 or more employees (over all facilities) have until January 4, 2021 to make sure that each of its employees have either received their COVID-19 shots or begun a program of weekly COVID-19 testing and mask wearing while working. The new rule also requires employers to provide paid time for workers to get vaccinated.

The specifics of this program are more fully set forth in the [Fact Sheet: Biden Administration Announces Details of Two Major Vaccination Policies](https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/fact-sheet-biden-administration-announces-details-of-two-major-vaccination-policies/), published by the White House at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/fact-sheet-biden-administration-announces-details-of-two-major-vaccination-policies/>,

According to the White House's Fact Sheet

“OSHA is issuing a COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) to require employers with 100 or more employees (i.e., “covered employers”) to:

- **Get Their Employees Vaccinated by January 4th and Require Unvaccinated Employees to Produce a Negative Test on at Least a Weekly Basis:** All covered employers must ensure that their employees have received the necessary shots to be fully vaccinated – either two doses of Pfizer or Moderna, or one dose of Johnson & Johnson – by January 4th. After that, all covered employers must ensure that any employees who have not received the necessary shots begin producing a verified negative test to their employer on at least a weekly basis, and they must remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed health care provider. The ETS lays out the wide variety of tests that comply with the standard. Given that vaccines are safe, free, and the most effective way for workers to be protected from COVID-19 transmission at work, the ETS does not require employers to provide or pay for tests. Employers may be required to pay for testing because of other laws or collective bargaining agreements.
- **Pay Employees for the Time it Takes to Get Vaccinated:** All covered employers are required to provide paid-time for their employees to get vaccinated and, if needed, sick leave to recover from side effects experienced that keep them from working.

The information contained herein is not intended to constitute legal advice. Please contact an attorney for legal advice particular to your needs and requests.



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- Ensure All Unvaccinated Employees are Masked: All covered employers must ensure that unvaccinated employees wear a face mask while in the workplace.
 - Other Requirements and Compliance Date: Employers are subject to requirements for reporting and recordkeeping that are spelled out in the detailed OSHA materials.... While the testing requirement for unvaccinated workers will begin after January 4th, employers must be in compliance with all other requirements – such as providing paid-time for employees to get vaccinated and masking for unvaccinated workers – on December 5th. The Administration is calling on all employers to step up and make these changes as quickly as possible.”

It is important to note that the implementation of this program does not eliminate an employee’s ability to object to mandated vaccinations on the basis of religion. For such an exemption to be recognized, the objecting employee must first inform his or her employer of the religious exemption. Once the employer is put on notice, the employer should presume that an employee’s faith-based request for a vaccine exemption is legitimate, i.e., based on a religious belief. Notwithstanding, the employer has the right to seek additional information regarding the request by asking the employee for verification of the sincerity or religious nature of a professed belief. The purpose of this limited inquiry is not to judge an employee’s beliefs, but rather to gain enough information so that the employer can make an informed decision as to whether the exemption request is belief based or whether it is based on social, political or economic views or personal preferences. If the request is based on the later, then the employer can deny the request without repercussion. In addition, if the employer determines that the exemption request is truly belief based, but the result of the accommodation would be too costly, impair workplace safety, diminish productivity, or cause co-workers to carry the accommodated employee’s share of his or her work, then the request for accommodation can be denied.

For more information, please contact the law offices of Blustin & Associates at info@blustinlaw.com.