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

As OSHA's 400 plus page Emergency Temporary Standard (available by link at blustinlaw.com) to require employers with 100 or more employees to get their employees vaccinated or take weekly COVID-19 tests and wear masks is being digested, there are a number of facts worth reiterating. Those facts include:

1. All employers employing 100 or more employees must have a written mandatory vaccination policy in effect by December 4, 2021. This policy can either be a hard vaccine only policy or a soft policy that recognizes both the requirement for vaccination and the opportunity for weekly testing and masking in the workplace as an alternative.
2. The vaccination policy must begin on January 4, 2022.
3. Employers must require and maintain proof of an employee's vaccination status, either through vaccination cards, medical records, or an affidavit of vaccination. False statements in any of these documents will be punishable by criminal penalties.
4. Employers must provide up to 4 hours paid time off for an employee to receive their vaccination.
5. Employer must give employees reasonable time off and paid sick leave to recover from symptoms of each vaccine dose received as of November 4, 2021.
6. Employers that allow testing as an option to vaccination must have employees tested at least once each week if the employees perform their duties at the workplace. Employees must provide their employers with test results and the employer must retain those results in the same manner that they retain employees' vaccination cards.
7. At home test kits that are self-administered, and self-read are not acceptable testing alternatives UNLESS they are proctored by an employer, doctor or "teledoc" program.
8. Employees may be exempt from the vaccination/self-testing mandate if there are medical reasons for a delay or deferral from vaccination or if there is a need for an accommodation because of a disability or religious objection.
9. In order to determine whether a business has 100 or more employees, OSHA has put forward the following guidance at page 342 of the subject ETS:

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



For a single corporate entity with multiple locations, all employees at all locations are counted for purposes of the 100-employee threshold for coverage under this ETS. In a traditional franchisor-franchisee relationship in which each franchise location is independently owned and operated, the franchisor and franchisees would be separate entities for coverage purposes, such that the franchisor would only count “corporate” employees, and each franchisee would only count employees of that individual franchise. In other situations, two or more related entities may be regarded as a single employer for OSH Act purposes if they handle safety matters as one company, in which case the employees of all entities making up the integrated single employer must be counted.

10. When following the guidance in ¶9 above, Employers should count both full time and part time employees who perform their duties by being physically present at Employer’s place of work. Independent contractors are not to be included in the count.

OSHA has published an FAQ page on its website regarding this vaccination mandate. The FAQ can be found at <https://www.osha.gov/coronavirus/ets2/faqs>.

This newsletter will be updated with additional facts over the next few dates. In you need information more quickly, please contact the law offices of Blustin & Associates at info@blustinlaw.com or (763) 355-9072.