

FEDERAL VACCINE MANDATE FAQ

NOVEMBER 10, 2021

The Occupational Safety and Health Administration has released its much-anticipated rules specifying how businesses with at least 100 employees are to ensure their employees are vaccinated against COVID-19, and how to implement an option for employees to be tested if they do not want to be vaccinated. OSHA also posted an [extensive list of FAQs](#) and [a fact sheet](#).

The rules, known officially as an Emergency Temporary Standard and enforceable by law, require businesses with 100 employees or more to ensure that their workers are vaccinated by January 4. After that, if the employer chooses, employees can avoid vaccination by submitting a weekly negative test for COVID-19. Under the ETS, employers are required to give employees paid time off to get immunized or to recover from any side effects. Workers must provide proof of vaccination to their employer, which is required to maintain records of vaccination status and test results for all employees.

The ETS will remain in place for six months, at which point it will either be replaced by a permanent standard or withdrawn.

WHAT ARE THE KEY COMPLIANCE DATES UNDER THE ETS?

The effective date for the ETS is November 5, 2021, which is the date the ETS was published in the Federal Register. Although the ETS becomes effective immediately, employers have some time to come into compliance with the different requirements of the ETS.

BY DECEMBER 5, EMPLOYERS WILL HAVE TO:

- Conduct an assessment of their workforce to determine who is vaccinated and who is not, obtain acceptable proof of vaccination, and maintain records and roster of vaccination status
- Establish their policy on vaccination
- Ensure employees who are not fully vaccinated wear proper face coverings when indoors or in a vehicle with another person for work purposes
- Provide each employee information about the ETS, workplace policies and procedures, vaccination efficacy, safety and benefits, protections against retaliation and discrimination, and laws that provide for criminal penalties for knowingly supplying false documentation
- Report work-related COVID-19 fatalities within 8 hours and work-related COVID-19 in patient hospitalizations within 24 hours
- Remove any employee who received a positive COVID-19 test or COVID-19 diagnosis.

BY JANUARY 4, EMPLOYERS WILL HAVE TO:

- Ensure all employees are fully vaccinated, or ensure employees who are not fully vaccinated are tested for COVID-19 at least weekly, or within 7 days before returning to work if away from the workplace for a week or longer



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HOW ARE THE 100 EMPLOYEES COUNTED?

The threshold is per company, not per location. So, for instance, a franchise operator with one store that has less than 100 employees isn't covered under the ETS. But a franchise operator with three stores and more than 100 employees total among those stores is subject to the ETS. Similarly, a business is subject to the ETS if it has at least 100 employees at any time during the six-month period in which the ETS is in effect, even if its workforce falls below 100 during that timeframe.

DO EMPLOYEES IN INTERNATIONAL OFFICES, PART-TIME WORKERS, OR CONTRACTORS COUNT TOWARDS THE 100-EMPLOYEE THRESHOLD?

The ETS only applies to U.S. workers. Part-time workers do count towards the threshold, but independent contractors do not.

Employees working remotely are also included as part of the 100-employee threshold, but they do not have to be vaccinated or tested if they are not coming into contact with other employees or customers. So, if a remote worker is the only person in a location or works exclusively from home they are exempt from the ETS.

The only other exception to the standard is employees who work exclusively outdoors and are not traveling to and from jobs with others.

WHAT QUALIFIES AS BEING FULLY VACCINATED?

OSHA considers an employee fully vaccinated if they have had both doses of the Pfizer or Moderna vaccination or one dose of the Johnson & Johnson vaccination. Those employees who have received only one shot of the Pfizer or Moderna vaccination are not considered fully vaccinated. Neither are those employees who have previously had COVID and recovered. Booster shots are not part of the vaccination requirement under the ETS.

WHAT IF AN EMPLOYEE DOESN'T CONSENT TO BE VACCINATED? DO I HAVE TO LET THEM GO?

Not necessarily. The ETS allows employers to retain unvaccinated employees provided the employee agrees to weekly COVID tests and follows masking requirements when working indoors even if they test negative. Employers have the option to provide a testing option and can dismiss an employee who refuses to comply with the vaccine mandate provided the refusal is not based on a sincerely held religious belief or medical reason. EEOC has guidance on how employers should handle requests for religious or medical exemptions.



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DO I NEED TO PAY FOR VACCINES AND TESTING?

Employers do not have to pay for vaccinations (they are available for free) but must provide up to four hours of paid leave for workers to receive each vaccination dose. This leave cannot take from the employees' existing paid leave balance. Employers must also provide time off to recover, with OSHA suggesting up to two days, and those two days can be drawn from existing paid leave balances. Moreover, employers do not have to provide paid time off for employees who test positive and must be removed from the workplace.

Employers do not have to provide tests or pay for them if an employee merely refuses to be vaccinated. However, if an employee has a religious or medical exemption, the employer would have to pay for testing. The ETS specifies what types of tests are acceptable.

