

## S U M M A R Y

# COVID-19 Vaccination and Testing ETS



The Occupational Safety and Health Administration (OSHA) has issued an emergency temporary standard (ETS) to minimize the risk of COVID-19 transmission in the workplace. The ETS establishes binding requirements to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID-19 in the workplace.

COVID-19 was not known to exist until January 2020, and since then nearly 745,000 people, many of them workers, have died from the disease in the U.S. alone. At the present time, workers are continually becoming seriously ill and dying as a result of occupational exposures to COVID-19. OSHA expects that the Vaccination and Testing ETS will result in approximately 23 million individuals becoming vaccinated. The agency has conservatively estimated that the ETS will prevent over 6,500 deaths and over 250,000 hospitalizations. In issuing the ETS, OSHA has made several important determinations:

### **Unvaccinated Workers Face Grave Danger:**

Unvaccinated workers are much more likely to contract and transmit COVID-19 in the workplace than vaccinated workers. OSHA has determined that many employees in the U.S. who are not fully vaccinated against COVID-19 face grave danger from exposure to COVID-19 in the workplace. This finding of grave danger is based on the severe health consequences associated with exposure to the virus along with evidence demonstrating the transmissibility of the virus in the workplace and the prevalence of infections in employee populations. The evidence for the finding of a grave danger is in Section III.A. of the ETS preamble.

### **An ETS is Necessary:**

Workers are becoming seriously ill and dying as a result of occupational exposures to COVID-19, when a simple measure, vaccination, can largely prevent those deaths and illnesses. The ETS protects these workers through the most effective and efficient control available – vaccination – and further protects workers who remain unvaccinated through required regular testing, use of face coverings, and removal of all infected employees from the workplace. OSHA also concludes, based on its

enforcement experience during the pandemic to date, that continued reliance on existing standards and regulations, the [General Duty Clause of the OSH Act](#), and workplace guidance, in lieu of an ETS, is not adequate to protect unvaccinated employees from COVID-19. Thus, OSHA has also determined that an ETS is necessary to protect unvaccinated workers from the risk of contracting COVID-19 at work. The evidence for the need for the ETS is in Section III.B. of the ETS preamble.

### **The ETS is Limited to Employers with 100 or More Employees:**

In light of the unique occupational safety and health dangers presented by COVID-19, and against the backdrop of the uncertain economic environment of a pandemic, OSHA is proceeding in a stepwise fashion in addressing the emergency this rule covers. OSHA is confident that employers with 100 or more employees have the administrative capacity to implement the standard's requirements promptly, but is less confident that smaller employers can do so without undue disruption. OSHA needs additional time to assess the capacity of smaller employers, and is seeking comment to help the agency make that determination. Nonetheless, the agency is acting to protect workers now in adopting a standard that will reach two-thirds of all private-sector workers in the nation, including those working in the largest facilities, where the most deadly outbreaks of COVID-19 can occur. Additional information on the scope of the ETS is found in Section VI.B. of the ETS preamble.

### **The ETS is Feasible:**

OSHA has evaluated the feasibility of this ETS and has determined that the requirements of the ETS are both economically and technologically feasible. The evidence for feasibility is found in Section IV. of the ETS preamble. The specific

requirements of the ETS are outlined and described in the Summary and Explanation, which is in Section VI. of the ETS preamble.

#### **The ETS Preempts State and Local Laws:**

OSHA intends the ETS to address comprehensively the occupational safety and health issues of vaccination, wearing face coverings, and testing for COVID-19. Thus, the standard is intended to preempt States, and political subdivisions of States, from adopting and enforcing workplace requirements relating to these issues, except under the authority of a Federally-approved State Plan. In particular, OSHA intends to preempt any State or local requirements that ban or limit an employer from requiring vaccination, face covering, or testing. Additional information on the preemption of State and local laws is found in Section VI.A. of the ETS preamble.

#### **The ETS Also Serves as a Proposed Rule:**

Although this ETS takes effect immediately, it also serves as a proposal under Section 6(b) of the OSH Act for a final standard. Accordingly, OSHA seeks comment on all aspects of this ETS and how it would be adopted as a final standard. OSHA encourages commenters to explain why they prefer or disfavor particular policy choices, and to include any relevant studies, experiences, anecdotes or other information that may help support the comment. Stakeholders may submit comments and attachments, identified by Docket No. OSHA-2021-0007, electronically at [www.regulations.gov](http://www.regulations.gov). Follow the instructions online for making electronic submissions.

#### **OSHA May Revise or Update the ETS:**

OSHA will continue to monitor trends in COVID-19 infections and death as more of the workforce and the general population become fully vaccinated against COVID-19 and as the pandemic continues to evolve. Where OSHA finds a grave danger from the virus no longer exists, or new information indicates a change in measures necessary to address the grave danger, OSHA may update this ETS, as appropriate.

This fact sheet highlights some of the additional requirements of the ETS; employers should consult the standard for full details. Read the full text of the ETS at: [www.osha.gov/coronavirus/ets2](http://www.osha.gov/coronavirus/ets2).

## **Understanding the ETS**

- **Employers covered by the ETS.** The ETS generally applies to employers in all workplaces that are under OSHA's authority and jurisdiction, including industries as diverse as manufacturing, retail, delivery services, warehouses, meatpacking, agriculture, construction, logging, maritime, and healthcare. Within these industries, all employers that have a total of at least 100 employees firm- or corporate-wide, at any time the ETS is in effect, are covered.
- **Workplaces not covered by the ETS.** This standard does not apply to workplaces covered under the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors or in settings where employees provide healthcare services or healthcare support services when subject to the requirements of the Healthcare ETS (29 CFR 1910.502).
- **Employees of covered employers not subject to the requirements.** The ETS does not apply to employees who do not report to a workplace where other individuals such as coworkers or customers are present, employees while they are working from home, or employees who work exclusively outdoors.
- **Effective Dates.** The ETS is effective immediately upon publication in Federal Register. To comply, employers must ensure provisions are addressed in the workplace by the following dates:
  - 30 days after publication: All requirements other than testing for employees who have not completed their entire primary vaccination dose(s)
  - 60 days after publication: Testing for employees who have not received all doses required for a primary vaccination

### **How to Protect Workers from COVID-19**

The ETS establishes minimum vaccination, vaccination verification, face covering, and testing requirements to address the grave danger of COVID-19 in the workplace. The key requirements of the ETS are:

**Employer Policy on Vaccination.** The ETS requires covered employers to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for **employers that instead establish, implement, and enforce a policy allowing**

employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and wear a face covering at the workplace.

**Determination of employee vaccination status.** The ETS requires employers to determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain records of each employee's vaccination status, and maintain a roster of each employee's vaccination status.

**Employer support for employee vaccination.** The ETS requires employers to support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each vaccination dose, and reasonable time and paid sick leave to recover from side effects experienced following each dose.

**COVID-19 testing for employees who are not fully vaccinated.** The ETS requires employers to 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 7 days before returning to work (if away from the workplace for a week or longer). **The ETS does not require employers to pay for any costs associated with testing.** However employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements. In addition, nothing prohibits employers from voluntarily assuming the costs associated with testing.

**Employee notification to employer of a positive COVID-19 test and removal.** The ETS requires employers to: (1) require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19; (2) immediately remove any employee from the workplace, regardless of vaccination status, who received a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider; (3) keep removed employees out of the workplace until they meet criteria for returning to work.

**Face coverings.** The ETS requires employers to 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. Employers must not prevent any employee, regardless of vaccination status, from voluntarily wearing a face covering unless it creates a serious workplace hazard (e.g., interfering with the safe operation of equipment).

**Information provided to employees.** The ETS requires employers to provide employees the following in a language and at a literacy level the employees understand: (1) information about the requirements of the ETS and workplace policies and procedures established to implement the ETS; (2) the CDC document "[Key Things to Know About COVID-19 Vaccines](#)"; (3) information about protections against retaliation and discrimination; and (4) information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.

**Reporting COVID-19 fatalities and hospitalizations to OSHA.** The ETS requires employers to report work-related COVID-19 fatalities to OSHA within 8 hours of learning about them, and work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the hospitalization.

**Availability of records.** The ETS requires employers to make available for examination and copying an employee's COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee. Employers are also required to make available to an employee, or an employee representative, the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

### Additional Information

Visit [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for additional information on:

- COVID-19 Laws and regulations
- COVID-19 Enforcement policies
- Compliance assistance materials and guidance
- Worker's Rights (including how/when to file a safety and health or whistleblower complaint).

This summary is intended to provide information about the COVID-19 Emergency Temporary Standard. The Occupational Safety and Health Act requires employers to comply with safety and health standards promulgated by OSHA or by a state with an OSHA-approved state plan. However, this summary is not itself a standard or regulation, and it creates no new legal obligations.