

OSHA Releases COVID-19 Vaccine Emergency Temporary Standard



By [Phoebe B. Mitchell](#)

The Occupational Safety and Health Administration released its highly anticipated [Emergency Temporary Standard\[1\]](#) (ETS) on November 4, 2021. The ETS requires employers with 100 or more employees to establish, implement and enforce a written mandatory COVID-19 vaccination policy. The Rule requires employers to:

1. Establish, implement, and enforce a written mandatory vaccination policy;
2. Determine the vaccination status of each employee and maintain a record of each employee's vaccination status; and
3. Provide support for employee vaccination, including paid time off.



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Here are key points from the ETS:

- Employers with 100 or more employees are covered.
 - As for counting employees toward the threshold, OSHA's FAQs say this:

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.

- Covered employers must establish, implement and enforce
 - a written mandatory vaccination policy; or
 - a written policy allowing employees to choose either:
 - to be fully vaccinated
 - or provide proof of regular testing for COVID-19 and wear a face covering at work.

Each employee must provide acceptable proof of vaccination status to their employer, which the employer must keep and treat as other medical records.

- Employers must provide up to 4 hours of paid time off to allow an employee to become vaccinated.
- Where employers adopt a policy that allows employees to remain unvaccinated, the employer must:

- ensure that unvaccinated employees comply with COVID-19 testing procedures; and
- ensure that unvaccinated employees wear a face covering when indoors (with limited exceptions).
- Testing for unvaccinated employees:
 - Employees who report to work at least once every 7 days must:
 - be tested at least once every 7 days; and
 - provide documentation of the most recent test result to their employer no later than the 7th day following the last test result.
 - Employees who do not report to work at least once every 7 days must:
 - be tested within 7 days prior to returning to the workplace; and
 - provide documentation of the test result to the employer upon return to the workplace.
- Employers are not required to pay for employee testing or face coverings.
- Remote workers (work from home or work exclusively outdoors) are exempt from the ETS.
- Employers must comply with most provisions of the Rule by December 4, 2021.

Employers should consult with their employment counsel for additional guidance on addressing concerns regarding the ETS. [Phillips Murrah's labor and employment](#) attorneys continue to monitor developments to provide up-to-date advice to our clients.

For more information on this alert and its impact on your business, please call 405.606.4711 or [email](#) Phoebe B. Mitchell.



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