

OSHA Issues COVID-19 Workplace Vaccine-or-Testing Mandate

Today, the Occupational Safety and Health Administration (OSHA) issued its Interim Final Rule regarding vaccination of employees of large employers (100+ employees). The rules apply to employers with a total of, at least, 100 employees within the entire firm or corporation at any time the rule is in effect. The requirements begin December 6, 2021, except for the testing requirements which start January 4, 2022. The rule does not apply to health care workers or federal contractors which are covered under separate, previously issued OSHA rules. This means federal workers and federal contractors must continue to comply with the Safer Federal Workforce Task Force guidance.

The Interim Final Rule does not apply to the following:

- 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; and
- Employees who work exclusively outdoors.

Here are some highlights of the Interim Final Rule:

- Employers must determine the vaccination status of each employee, obtain acceptable proof of vaccination, and maintain records, including a roster of each employee's vaccination status.
- Employers must provide paid time off for workers to get vaccinated and paid leave for employees to recover from any side effects from the vaccine that keep employees from being able to work.
- Businesses may choose to require unvaccinated employees to provide a negative COVID-19 test at least weekly as an alternative to vaccination, but the employer is NOT required to pay for the test.
 - Examples of acceptable tests include tests that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by an employer. Antibody tests are not acceptable.
- Unvaccinated employees must wear a mask when indoors or when occupying a vehicle with another person for work purposes.
- An employee who already had COVID is not exempt.
- Employers must require employees to report a positive COVID-19 test or diagnosis and certain actions are required following such a test result or diagnosis.
- Contrary State and local requirements are preempted.

- OSHA referenced its “egregious violation” policy that may allow it to impose large penalties to achieve deterrence against “bad actor” employers who willfully disregard the obligations to protect employees when certain aggravating circumstances are present, such as a large number of injuries or illnesses, bad faith, or an extensive history of noncompliance. For what OSHA refers to as willful penalties, a company can be fined \$136,532. Otherwise, the standard penalty is set at \$13,653 for a single violation; that number could increase if there are multiple violations in a workplace.

We hope you found this brief overview helpful. The full package is 490 pages long, and we are in the process of reviewing it in depth. Please contact us if you have any questions.

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