

OSHA and CMS Vaccination Rules Overview

Just grab a chair, here are the details.

Throughout the day yesterday, November 4, 2021, the United States Occupational Safety and Health Administration (OSHA) released its Emergency Temporary Standards (ETS) that is designed to protect employees of private sector employers with at least 100 employees in all industries throughout the country from COVID-19. This new ETS followed the vaccine mandate that was issued for federal employees and contractors. This new ETS will affect over 80 million private sector workers and is arguably the most forceful step taken by the federal government to address the COVID-19 pandemic. To complicate matters and compliance obligations a bit more, the Centers for Medicare and Medicaid Services (CMS) simultaneously released its Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule. The CMS Final Rule is applicable to most Medicare and Medicaid certified providers and suppliers and must be met to continue participation in Medicare and Medicaid programs.

In addition, the White House announced that its previously published Federal contractor vaccination mandate would be updated to move the compliance deadline from December 8, 2021 to January 4, 2022, in keeping in-line with the timelines above.

OSHA ETS - Key Highlights and Resource Information Issued by OSHA:

- Yesterday afternoon OSHA released an overview of the COVID-19 Vaccination and Testing ETS. Here is a link to OSHA's COVID-19 Vaccination and Testing ETS Summary <https://www.osha.gov/sites/default/files/publications/OSHA4162.pdf>.
- Here is a link to the FAQs issued by OSHA related to the COVID-19 Vaccination and Testing ETS <https://www.osha.gov/coronavirus/ets2/faqs>.
- Last but not least, here is a link to OSHA's "About the ETS" overview of the COVID-19 Vaccination and Testing ETS <https://www.osha.gov/sites/default/files/publications/OSHA4161.pdf>.
- **Vaccinate or Test-by January 4, 2022:** all private sector employers with at least 100 employees must be fully vaccinated or show a weekly negative COVID-19 test. The deadline to comply with all other provisions under this ETS is thirty days after its anticipated November 5, 2021, publication in the Federal Register or on or about December 5, 2021. Employers are required to obtain proof of vaccination.
- **Masks mandated for Unvaccinated Employees** – covered employers must ensure that all unvaccinated employees wear a face covering while indoors or when occupying a vehicle with another person for work purposes, with very limited exceptions.
- **Paid Time Off** – beginning on or around December 5, 2021, covered employers must provide paid time off for employees to receive the vaccination and recover from any side effects caused by the vaccine.
- **Paying for Tests** – OSHA's position is that covered employers are not required to provide or pay for COVID-19 tests if their employees who refuse vaccination; however, employers will still need to pay for the tests for employees unable to be vaccinated due to legally protected reasons (disability or sincerely-held religious beliefs).
- **Exempted Employees** – employees of covered employers who work entirely remotely or who work only outdoors are included for the purposes of the 100-employee count but are exempt from the "vax-or-test".

- **Interaction with the CMS Rule** (addressed below) – this OSHA ETS rule will not apply to workplaces that receive Medicare or Medicaid funds, as those workplaces are covered by the CMS rule.

CMS Interim Final Rule:

- Biden Administration Fact Sheet announcing the new CMS Final Rule: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/fact-sheet-biden-administration-announces-details-of-two-major-vaccination-policies/>
- Overview of the new CMS Final Rule issued by CMS <https://www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf>
- **Facilities Covered** – Ambulatory Surgical Centers, Hospices, Programs of All-Inclusive Care for the Elderly, Hospitals, Long-Term Care Facilities, Psychiatric Residential Treatment Facilities, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Home Health Agencies, Comprehensive Outpatient Rehabilitation Facilities, Critical Access Hospitals, Clinics, Community Mental Health Centers, Home Infusion Therapy Suppliers, Rural Health Clinics/Federally Qualified Health Centers and End-Stage Renal Disease Facilities.
- **Covered Staff**-Facility Employees: Licensed Practitioners, Students, Trainees, Volunteers, individuals who provide care or treatment or other services to patients.
- **Vaccination Mandate** – all covered facilities, **by December 5, 2021**, must ensure that all covered staff have received the first dose of a 2-dose COVID-19 vaccine or a 1-dose COVID-19 vaccine prior to providing any care, treatment or other services. All eligible staff must have received the necessary shots to be “fully vaccinated” (either 2 doses of Pfizer or Moderna or 1 dose of Johnson and Johnson) **by January 4, 2022**.
- **No Testing Option** – this CMS Final Rule does not include testing as an alternative to vaccination.
- **Possible Exemptions** – the Final Rule provides for exemptions based upon recognized medical conditions or sincerely-held religious beliefs.

We know you have a lot on your plate and we stand ready to help. We have created an [OSHA ETS Compliance Package](#) and a [CMS Health Care Compliance Package](#). The contents of these compliance packages give your team what you need to comply with these new comprehensive rules and compliance obligations for a fixed fee. Please contact Mike Foley at mike@foleylawpractice.com should you be interested in purchasing the contents.