

LEGAL UPDATE

OSHA Vaccination and Testing ETS Effective Date Requirements

On Nov. 4, 2021, OSHA [announced](#) a [COVID-19 vaccination and testing emergency temporary standard](#) (ETS) to address the grave danger of COVID-19 infection in the workplace. The ETS affects private sector employers with **100 or more employees**.

On Jan. 7, 2022, the U.S. Supreme Court heard an oral argument concerning the validity of the ETS. However, the OSHA vaccine and testing ETS is currently in place and enforceable. As a result, employers are expected to comply with the effective dates of Jan. 10 and Feb. 9, 2022. Employers should also monitor legal developments to learn whether the court will ultimately uphold or strike down the ETS.

Requirements Effective Jan. 10

The ETS requires employers to develop and implement a written COVID-19 policy. The policy needs to specify whether employers will require employee vaccination or allow for weekly testing. In addition, employers will need to determine the vaccination status and obtain acceptable proof of vaccination for each employee; create and maintain a roster of each employee's vaccination status; follow notification procedures for positive COVID-19 cases; and ensure unvaccinated employees wear masks in the workplace.

Employers must provide employees paid time off to receive and recover from each primary vaccination dose. Employers will also need to immediately remove employees who report positive COVID-19 tests or diagnoses until return-to-work criteria are met. Finally, while the ETS does not require employers to cover the cost of screening tests, employers should be aware of local laws or other collectively negotiated agreements that may dictate otherwise.

Requirements Effective Feb. 9

Employees who are not fully vaccinated must be tested weekly or within seven days before returning to work. Employees must provide documentation of their test results to their employer. The ETS prohibits employees from administering and reading their own tests. Employee home tests must be proctored by a telehealth professional or the employer. Employers should review the testing regulations to make sure they are in compliance with all ETS requirements.

Important Highlights

- ☑ OSHA has resumed ETS implementation and enforcement nationwide.
- ☑ The agency changed the effective dates of the ETS to Jan. 10, 2022 (Feb. 9, 2022, for testing requirements).
- ☑ Employers subject to the ETS should monitor legal developments closely and consider what measures they would need to adopt if the Supreme Court upholds the ETS.

Affected employers must develop, implement and enforce most ETS requirements by Jan. 10, 2022, and testing requirements by Feb. 9, 2022.

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