

Team –

As you know, OSHA issued its Vaccination and Testing Emergency Temporary Standard (“ETS”) for employers with 100 or more employees, requiring employees to either: (1) get vaccinated; or (2) get weekly COVID-19 testing and wear face coverings. In addition to informing you about our policies and procedures to implement the requirements of the ETS, below and attached is some key information about the standard:

- **Attachment 1:** *The requirements of OSHA’s COVID-19 Vaccination and Testing ETS;*
- **Attachment 2:** *CDC’s [“Key Things to Know About COVID-19 Vaccines;”](#)*
- **Attachment 3:** *The requirements of 29 CFR 1904.35(b)(1)(iv), which prohibits employers from discharging or in any manner discriminating against an employee for reporting a work-related injuries or illness, and section 11(c) of the OSH Act, which prohibits employers from discriminating against an employee for exercising rights under, or as a result of actions that are required by, the ETS. Section 11(c) also protects the employee from retaliation for filing an occupational safety or health complaint, reporting a work-related injuries or illness, or otherwise exercising any rights afforded by the OSH Act; and*
- **Attachment 4:** *The prohibitions of 18 U.S.C. 1001 and of section 17(g) of the OSH Act, which provide for criminal penalties associated with knowingly supplying false statements or documentation.*

If you have any questions about these, or about the ETS in general, please do not hesitate to reach out.

Attachment 1

FACT SHEET

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.

The ETS is necessary to protect unvaccinated workers from the risk of contracting COVID-19 at work. The rule covers all employers with a total of 100 or more employees with a few exceptions described below. Covered employers must develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to elect either to get vaccinated or to undergo regular COVID-19 testing and wear a face covering at work. This fact sheet highlights some of the additional requirements of the ETS; employers should consult the standard for full details.

Which employers are covered by the ETS?

- Private employers with 100 or more employees firm- or corporate-wide.
- In states with OSHA-approved State Plans, state- and local-government employers, as well as private employers, with 100 or more employees will be covered by state occupational safety and health requirements.

Which workplaces are not covered by the ETS?

- Workplaces covered under the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and subcontractors; and
- Settings where any employee provides healthcare services or healthcare support services when subject to the requirements of [the Healthcare ETS](#) (§ 1910.502).

- Workplaces of employers who have fewer than 100 employees in total.
- Public employers in states without State Plans.

If an employer is covered by the ETS, does that mean all of its employees must follow the provisions of this ETS?

No. The requirements of the ETS do not apply to:

- Employees who do not report to a workplace where other individuals are present.
- Employees while working from home.
- Employees who work exclusively outdoors.

What does the ETS require employers to do?

- 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 to elect either to get vaccinated or to undergo weekly COVID-19 testing and wear a face covering at the workplace.
- Determine the vaccination status of each employee, obtain acceptable proof of vaccination from vaccinated employees, maintain records of each employee's vaccination status, and maintain a roster of each employee's vaccination status.
- Support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each primary vaccination dose, and reasonable time and paid sick leave to recover from any side effects experienced following each primary vaccination dose.

- 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).
- Require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19.
- Immediately remove from the workplace any employee, regardless of vaccination status, who received a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider, and keep the employee out of the workplace until return to work criteria are met.
- 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.
- Provide each employee with information, in a language and at a literacy level the employee understands, about the requirements of the ETS and workplace policies and procedures established to implement the ETS; vaccine efficacy, safety, and the benefits of being vaccinated (by providing the CDC document “[Key Things to Know About COVID-19 Vaccines](#)”); protections against retaliation and discrimination; and laws that provide for criminal penalties for knowingly supplying false statements or documentation.

- 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.
- Make certain records available for examination and copying to an employee (and to anyone having written authorized consent of that employee) or an employee representative.

When does it take effect?

- Employers must comply with most provisions by 30 days after the date of publication in the Federal Register
- Employers must comply with the testing requirement by 60 days after the date of publication in the Federal Register

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

Additional Information

Visit 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 Fact Sheet 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 Fact Sheet is not itself a standard or regulation, and it creates no new legal obligations.

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. 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.

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 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.

Attachment 2



COVID-19

Key Things to Know About COVID-19 Vaccines

Updated Nov. 5, 2021

NOTICE: CDC now recommends that children between the ages of 5 and 11 years receive the Pfizer-BioNTech pediatric COVID-19 Vaccine. Learn more about [vaccines for children and teens](#).

What You Need to Know

Safety of COVID-19 Vaccine for Children 5 Years and Older

Before recommending COVID-19 vaccination for children, scientists conducted clinical trials. The FDA gave the Pfizer-BioNTech COVID-19 vaccine emergency authorization to use in children ages 5 years through 15 years old and full approval to use in people ages 16 years and older. Learn more about the [process of developing, authorizing and approving COVID-19 vaccines](#).



- COVID-19 vaccination is recommended for everyone ages 5 years and older. [Learn how to find a COVID-19 vaccine](#).
- Widespread vaccination is a critical tool to help stop the pandemic.
- COVID-19 vaccines are effective at helping protect everyone ages 5 years and older against severe disease and death from the virus that causes COVID-19, including known [variants](#) currently circulating (e.g., Delta variant).
- [People who are fully vaccinated](#) can resume activities that you did before the pandemic. However, people should wear a mask indoors in public if they are in an [area of substantial or high transmission](#). Being fully vaccinated and wearing a mask maximizes protection against COVID-19 infection and reduces the chances of spreading it to others.
- As with other routine vaccines, [side effects](#) may occur after vaccination. These are normal and should go away within a few days.
- The [benefits of COVID-19 vaccination](#) outweigh the known and potential risks, which are rare.
- People **cannot** get COVID-19 from getting vaccinated, and there is no evidence that COVID-19 vaccines cause fertility problems. Learn more about [how mRNA vaccines work](#).
- Unlike many medications, COVID-19 vaccine dosage does not vary by patient weight but by age on the day of vaccination.
- Adolescents ages 12 years and older receive the same dosage of Pfizer-BioNTech COVID-19 vaccine as adults.
- The Pfizer-BioNTech vaccine for children ages 5 through 11 has the same active ingredients as the vaccine given to adults and adolescents. However, children ages 5 through 11 years cannot get the Pfizer-BioNTech COVID-19 vaccine given to adults and adolescents. In addition, children ages 5 through 11 years receive an age-appropriate dose that is one-third of the adult dose of Pfizer-BioNTech COVID-19 vaccine. Smaller needles, designed specifically for children, are also used for children ages 5 through 11 years.
- People who are [moderately to severely immunocompromised](#) are recommended to get an additional primary dose of an mRNA COVID-19 vaccine (i.e., Pfizer-BioNTech or Moderna).
- Certain groups of people are recommended to get a [COVID-19 booster shot](#).
- People can get a COVID-19 vaccine and other vaccines, including flu vaccine, at the same time.



COVID-19 Vaccine ChatBot

Use SmartFind chat tool to find answers to common COVID-19 vaccination questions.

Get Started

Availability of Vaccines

COVID-19 vaccines are widely accessible in the United States. Everyone ages 5 years and older should [get a COVID-19 vaccination](#) as soon as possible. COVID-19 vaccines are [available for everyone at no cost](#), regardless of their immigration or health insurance status.

COVID-19 vaccines are widely accessible in the United States. Everyone ages 5 years and older should [get a COVID-19 vaccination](#) as soon as possible. COVID-19 vaccines are [available for everyone at no cost](#), regardless of their immigration or health insurance status.

Many doctors' offices, retail pharmacies, hospitals, and clinics offer COVID-19 vaccinations. Visit [vaccines.gov](#) to find locations that are offering vaccines to everyone ages 5 years and older. Parents can check with their child's healthcare provider, their local pharmacy, and health department about whether they offer COVID-19 vaccination. [Learn more about how to find a COVID-19 vaccine.](#)

Effectiveness

COVID-19 vaccines are effective at protecting people from COVID-19 and help keep adults and children from getting seriously sick. COVID-19 vaccines can reduce the risk of people spreading the virus that causes COVID-19. Getting everyone ages 5 years and older vaccinated can help the entire family, including siblings who are not eligible for vaccination and family members who may be at risk of getting very sick if they are infected.

Adults and children 5 years and older who are fully vaccinated can resume activities that they did before the pandemic. [Learn more about what people can do when they have been fully vaccinated.](#)

Studies show that COVID-19 vaccines are effective, especially at keeping adults and children from getting seriously ill even if they do get COVID-19. [Learn more about the benefits of getting vaccinated.](#)

COVID-19 vaccines teach our immune systems how to recognize and fight the virus that causes COVID-19. It typically takes **2 weeks after vaccination for the body to build protection** (immunity) against the virus that causes COVID-19.

People are considered fully vaccinated 2 weeks after their second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines, or 2 weeks after the single-dose Johnson & Johnson's Janssen COVID-19 vaccine. To receive the most protection, people should **receive all recommended doses** of a COVID-19 vaccine. [Learn more about who is recommended to get an additional primary dose or a booster dose.](#)


People can sometimes get COVID-19 after being fully vaccinated. However, this only happens in a small proportion of people, even with the Delta variant. When these infections occur among vaccinated people, they tend to be mild.

[Learn more about the effectiveness of COVID-19 vaccines.](#)



Safety

COVID-19 vaccines are [safe and effective](#). Vaccines cannot give you COVID-19. You may have side effects after vaccination. These are normal and should go away within a few days.

COVID-19 vaccines are [safe and effective](#). Millions of people in the United States have received COVID-19 vaccines. COVID-19 vaccines have undergone and continue to undergo the most intensive safety monitoring in U.S. history, which includes studies about adolescents and children. This monitoring includes using both established and new safety [monitoring systems](#)  to make sure that COVID-19 vaccines are safe.

COVID-19 vaccines cannot give you COVID-19. There is no evidence that COVID-19 vaccines cause fertility problems. Read more to [bust myths and learn the facts about COVID-19 vaccines](#).

CDC has developed a tool, **v-safe**, to help monitor how people are feeling after getting COVID-19 vaccines. **V-safe** is a free, easy-to-use, and confidential smartphone-based tool that uses text messaging and web surveys to provide personalized health check-ins after vaccination. Parents and caregivers can enroll themselves and their children ages 5 years and older in **v-safe** and report how they are feeling after they have been vaccinated for COVID-19. Learn how the federal government is using **v-safe** and other systems to monitor and [ensure the safety of COVID-19 vaccines](#).

While COVID-19 vaccines were developed rapidly, [all steps have been taken to ensure their safety and effectiveness](#).

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You may have side effects after vaccination, but these are normal

After COVID-19 vaccination, you may have some [side effects](#). These are normal signs that your body is building protection. The side effects from COVID-19 vaccination, such as tiredness, headache, or chills, may affect your ability to do daily activities, but they should go away within a few days. Learn more about [what to expect after getting vaccinated](#).

Possible Side Effects in Children Ages 5 Years and Older

Children may have some [side effects](#), which are normal signs that their body is building protection. These side effects may affect a child’s ability to do daily activities, but they should go away in a few days. Some children have no side effects. Severe allergic reactions (like anaphylaxis) and complications (like [myocarditis and pericarditis](#)) are rare. Learn more about [possible side effects in children](#).

Population Immunity

Population immunity, also known as herd immunity or community immunity, means that enough people in a community are protected from getting a disease because they’ve already had the disease or because they’ve been vaccinated.

Population immunity makes it hard for a disease to spread from person to person. It even protects those who cannot be vaccinated, like newborns or people who are allergic to a vaccine. The percentage of people who need to have protection to achieve population immunity varies by disease.

We are still learning how many people need to be vaccinated against COVID-19 before the population can be considered protected.

As we know more, CDC will continue to update our recommendations for both vaccinated and unvaccinated people.

Variants and Vaccines

- COVID-19 vaccines approved or authorized by the U.S. Food and Drug Administration (FDA) help protect against [Delta and other known variants](#).
- These vaccines are especially effective at keeping people from getting very sick or dying from COVID-19.
- To maximize protection against COVID-19 and prevent possibly spreading it to others, you should wear a mask indoors in public if you are in an [area of substantial or high transmission](#) even if you are fully vaccinated.
- We don’t know how effective the vaccines will be against new variants.

For Healthcare and Public Health

[Clinical and Professional Resources](#): Toolkits and resources for healthcare workers and public health professionals.

Related Pages

- › [When You’ve Been Fully Vaccinated](#)
- › [COVID-19 Vaccines for Children and Teens](#)
- › [Myths and Facts about COVID-19 Vaccines](#)
- › [Frequently Asked Questions about COVID-19 Vaccination](#)
- › [Benefits of Getting a COVID-19 Vaccine](#)

Last Updated Nov. 5, 2021

Attachment 3

FACT SHEET

Workers' Rights under the COVID-19 Vaccination and Testing ETS



OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) covers employers with 100 or more employees and requires them to take steps to minimize the risk of COVID-19 transmission in the workplace. The Occupational Safety and Health Act protects workers from retaliation for exercising their rights under the ETS.

Workplace Protections: Vaccination, Testing, and Face Coverings

Employees of employers covered by the ETS have a right to the protections afforded by the standard's requirements. Key requirements employers must follow to protect these employees include:

Employer Policy on Vaccination. The ETS requires covered employers to establish, implement, and enforce a written mandatory COVID-19 vaccination policy with an exception for employers that instead establish, implement, and enforce a written policy that requires unvaccinated employees to undergo weekly COVID-19 testing and wear a face covering at the workplace instead of vaccination.

Determination of employee vaccination status.

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

Employer support for employee vaccination.

The ETS requires covered employers to support vaccination by providing employees reasonable time, including up to four hours of paid time at the employee's regular rate of pay, to receive

each vaccination dose, and reasonable time and paid sick leave to recover from any side effects experienced following each dose.

COVID-19 testing for employees who are not fully vaccinated. The ETS requires covered 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.

Under the ETS, covered employers must: (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 receives a positive COVID-19 test or is diagnosed with COVID-19; and (3) keep removed employees out of the workplace until they [meet the requirements for returning to work](#).

Face coverings. The ETS requires covered 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 covered employers to provide employees with 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 covered employers to report work-related COVID-19 fatalities to OSHA within 8 hours and work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the incident.

Availability of records. The ETS requires covered employers to make available for examination and copying an individual’s COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee. Covered 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.

Protection from Retaliation

The Occupational Safety and Health Act (OSH Act) prohibits retaliation against employees for exercising their rights guaranteed under the Act, including filing an occupational safety or health complaint, reporting a work-related injury or illness, or otherwise exercising any rights afforded by the OSH Act.

Who Is Protected by the OSH Act?

The OSH Act’s prohibition on retaliation (Section 11(c)) protects private sector workers, it does not cover employees of the U.S. government or State or local government employees.¹ However, it does cover U.S. Postal Service employees.

What Activities Are Protected under the OSH Act?

A person may not discharge or in any manner retaliate against an employee because the employee exercised any right under the OSH Act. Here are some examples of COVID-19-related activities that are protected:

- Requesting paid time for a COVID-19 vaccination or paid time off for vaccine side effects, when paid time off is required by the ETS.
- Requesting personal protective equipment which the employee reasonably believes is required by an OSHA standard.
- Wearing personal protective equipment required or permitted by an OSHA standard.
- Reporting a COVID-19 infection or exposure to COVID-19 to an employer or OSHA.
- Reporting an unsafe condition to an employer or OSHA.

¹ Federal employees are protected from retaliation for occupational safety or health activity under procedures established by their agencies pursuant to Executive Order 12196. See 29 CFR 1960.46-47. They are also protected from retaliation for whistleblowing under the Whistleblower Protection Act. For more information visit www.osc.gov. Similar protections are provided by State laws in States operating OSHA-approved State Plans. For more information about OSHA State Plans, see www.osha.gov/stateplans.

- Requesting guidance on workplace safety from an employer, OSHA, or other government entity.
- Refusing to perform a work task if the employee has a reasonable apprehension of death or serious injury, refuses in good faith to perform the task, has no reasonable alternative, and there is insufficient time to eliminate the condition through regular enforcement channels and, where possible, the employee has asked their employer to correct the hazard and it was not corrected. For more information: www.osha.gov/workers.

A worker cannot be fired or discriminated against for filing a complaint with OSHA. If you experience retaliation, file a complaint at www.whistleblowers.gov.

Permissible Disciplinary Action

The OSH Act does not prevent employers from taking disciplinary action against employees for engaging in activities that are not protected. For example, where an employee does not comply with their employer's policy on vaccination, that action would generally not be protected under the OSH Act. The following

examples are actions that would generally not be covered by OSHA's anti-retaliation or discrimination protections:

- Employee failure to provide acceptable documentation of vaccination status;
- Employee failure to provide acceptable weekly COVID-19 test results, when required;
- Falsifying required vaccination documentation or test results; and
- Employee failure to properly wear required face coverings.

How to File a Complaint

If an employee believes they have been retaliated against, in violation of Section 11(c), they, or their representative, may file a complaint with OSHA. Complaints may be filed verbally or in writing. To file a complaint verbally: Visit a local area office or call OSHA at 1-800-321-OSHA (6742). Information on local area offices is available at www.osha.gov/contactus/bystate or can be obtained by calling OSHA at the above phone number.

This Fact Sheet 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 Fact Sheet is not itself a standard or regulation, and it creates no new legal obligations.

Attachment 4

FACT SHEET

Information for Employees on Penalties for False Statements and Records



The COVID-19 Emergency Temporary Standard (ETS) on Vaccination and Testing (29 CFR 1910.501) requires employers to inform each employee of the prohibitions of 18 U.S.C. § 1001 and of Section 17(g) of the Occupational Safety and Health (OSH) Act, which provide for criminal penalties associated with knowingly supplying false statements or documentation (29 CFR 1910.501(j)(4)). Employers may use this fact sheet to provide the required information to employees, with translations as necessary to ensure the information is provided in a language or languages the employees understand.

OSHA standards are promulgated under the authority granted by the OSH Act. The OSH Act recognizes that OSHA's ability to protect workers' safety and health hinges on truthful reporting. For that reason, Section 17(g) of the OSH Act, 29 U.S.C. § 666(g), provides:

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

Section 1001 in Title 18 of the United States Code (*Crimes and Criminal Procedure*) also provides for criminal penalties associated with knowingly supplying false statements or documentation. The provision at 18 U.S.C. § 1001(a) states in relevant part:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully

- 1. falsifies, conceals, or covers up by any trick, scheme, or device a material fact;**
- 2. makes any materially false, fictitious, or fraudulent statement or representation; or**
- 3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;**

shall be fined under this title or imprisoned not more than 5 years.

False statements or documents made or submitted for purposes of complying with policies required by OSHA's Vaccination and Testing ETS could fall under either or both of these statutory provisions.

The effectiveness of the protections afforded by OSHA's Vaccination and Testing ETS relies on employees providing truthful and accurate information, including, where applicable, proof of vaccination status and COVID-19 test results, to their employers, and on their employers maintaining accurate records of vaccination status and testing results. If OSHA discovers that false statements or documents have been made or submitted, it will consider referrals to the US Department of Justice for criminal prosecution in appropriate cases.

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