

OSHA EMERGENCY TEMPORARY STANDARD

*HELPING EMPLOYERS PREPARE FOR THE COVID-19 VACCINATION AND
TESTING PROGRAM*



NATIONAL ASSOCIATION
OF OCCUPATIONAL
HEALTH PROFESSIONALS

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- **NAOHP Board President**
- **Vice President, Business & Community Health**
- **Bellin Health:** Integrated Health System in Northeastern MI
of MI

- 5,000 employees
- Two Hospitals
- 32 Primary Care Clinics
- Ambulatory Orthopedic Surgery Center
- 175 Employer-based clinics
- Three Community Wellness/Fitness Centers
- Two Large Annual Run Properties



WHAT DO I NEED TO KNOW?

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.

**FULL DETAILS OF THE PROGRAM CAN BE LOCATED AT:
[HTTPS://WWW.OSHA.GOV/CORONAVIRUS/ETS2](https://www.osha.gov/coronavirus/ets2)**

Litigation Update

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, published on November 5, 2021 (86 Fed. Reg. 61402) ("ETS"). **The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order."** The U.S. Court of Appeals for the Sixth Circuit now has jurisdiction over ETS challenges and DOL has filed a motion to lift the stay. While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation. Note that the comment period is separate from the litigation.

DOES THIS PROGRAM INCLUDE ME?

- **All employees (including part-time and remote workers) count towards the threshold of 100 employees**
 - *If a company has 3 plant locations (Plant A has 40 employees, Plant B has 10 employees, Plant C has 60 employees) they will need to be in compliance with this program because the total amount of workforce is greater than 100*
 - *Independent contractors do NOT count towards the workforce*
 - *Companies of less than 100 employees are NOT impacted*

WHAT DOES THE ETS REQUIRE LARGE EMPLOYERS TO DO?

- **Determine the vaccination status of each employee:**
 - *Obtain acceptable proof of vaccination from vaccinated employees (copy of their vaccination card)*
 - *Maintain ongoing records and roster of each employee's vaccination status*
- **Support vaccination by providing employees:**
 - *Up to 4 hours of paid time to receive each vaccination dose*
 - *Paid sick leave to recover from any potential side effects*
 - *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*
 - <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>

WHAT DOES THE ETS REQUIRE LARGE EMPLOYERS TO DO?

- **Implement and enforce a mandatory COVID-19 vaccination policy**
 - *Employers who opt NOT to mandate the COVID-19 vaccine, must monitor and document that unvaccinated employees are undergoing routine testing*
 - *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).*
 - *Unvaccinated employees must also wear a face covering at the workplace when indoors or occupying a vehicle with another person for work purposes*

WHAT DOES THE ETS REQUIRE LARGE EMPLOYERS TO DO?

- **Who is EXEMPT from vaccine mandate (or testing program)**
 - *Employees who do not report to a workplace where other individuals are present*
 - *Employees while working remotely from home*
 - *Employees who work exclusively outdoors*

- **NOTE:** *While these employees are exempt from the mandate, they do count towards the count of 100 or more employees*

WHAT DOES THE ETS REQUIRE LARGE EMPLOYERS TO DO?

- **Reporting Requirements**

- **EMPLOYEES** *must:*

- *Promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19*

- **EMPLOYERS** *must:*

- *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*
- *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 vaccination and testing program records available for examination and copying*

WHAT ACTIONS CAN I TAKE TODAY??

- *Bellin is recommending large employers start taking immediate action to get prepared for the ETS mandate. Here are some steps to take today:*

1. Define the scope of the problem

- *Assemble a task team or individual in the company to champion this program*
- *Verify who is and who is not vaccinated at your company*
 - *Employers are expected to keep documentation of their workers' vaccination status, such as a copy of their vaccination card or a signed and dated employee attestation*
 - *It's time to start asking*

WHAT ACTIONS CAN I TAKE TODAY??

2. Define what my company policy will be:

- ***Will I implement a vaccination requirement for all employees?***
 - *Unless workers qualify for an exemption, you do have the right to mandate vaccines without a testing option*
- ***Will I grandfather current workforce and offer testing option BUT require vaccination for all new hires?***
 - *This could be a great way to not obligate tenured employees into vaccines, but also ensure your program compliance requirements will shrink over time due to turnover*

WHAT ACTIONS CAN I TAKE TODAY??

2. Define what my company policy will be (continued):

- ***Will I implement a weekly testing option for employees?***

- You do NOT need to provide paid time for employees seeking a weekly test-out option. (Remember, you do need to provide PTO for vaccinations)
- You do NOT need to pay for tests for employees (unless subjected to CBA agreement, where applicable)
- You do NOT need to provide tests for employees

**** These are 3 critical points to consider. Testing will be expensive and cumbersome for your company. Remember, employers must monitor and document that unvaccinated employees are undergoing routine testing, but you are NOT required to pay for or provide the tests, unless you choose to do so to ensure compliance****

WHAT ACTIONS CAN I TAKE TODAY??

2. Define what my company policy will be (continued):

- **As an employer, I want to offer onsite testing and pay for my employees testing. What next?**
 - Your testing program must be fully operational by January 4th, 2022
 - Consider a vaccination incentive program
 - » Depending on what testing option works best for you, a weekly testing program could cost **\$5,000 - \$8,000+ per year / per employee.**
 - » A financial incentive to vaccinated staff could make your workforce safer, healthier and reduce turnover when incentive payments are paid in multiple installments
 - » Example: \$X bonus after completing the vaccination series. \$Y dollars 6 months after completing vaccination series. \$Z dollars after 12 months.

RECAP / KEY INFORMATION AND DATES

- Full OSHA program can be found at: <https://www.osha.gov/coronavirus/ets2>
- **Get your arms around this starting today!** OSHA is requiring you to know the COVID-19 vaccination status of your workforce – it's okay (and now mandated) that we start asking!
 - Collect copies of vaccine cards for files
 - Build a database of employees and document their status
- **Promote vaccines between now and January 4th.** Get creative. Bellin can help with onsite vaccinations. More vaccines = easier compliance
- **Define your company policy** – Mandate vaccinations? Mandate new hires? Allow testing? (Will we pay for this? Will we provide the tests?)
- **Key Dates:**
 - **December 4th:** Employers should know and have documentation regarding vaccination status on current workforce. Unvaccinated must mask. Employers offer paid time off for vaccinations
 - **January 4th (HOLD):** Deadline for full vaccination. Testing program to go live.