

OSHA Announces COVID-19 Vaccine Mandate

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ATTORNEYS

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The U.S. Department of Labor Occupational Safety and Health Administration ("OSHA") yesterday announced a new emergency temporary standard ("ETS") requiring employers with 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination policy.

Within 30 days, California's OSHA must release workplace health and safety standards that are at least as effective as the federal ETS in preventing COVID-19 transmission, illness, and death. It is therefore expected that Cal/OSHA will adopt emergency temporary standards that require employers to implement, at minimum, the following provisions:

- ▶ Beginning December 5, 2021, employers must require unvaccinated employees to wear a face covering while indoors or riding in a vehicle with another person.
- ▶ By January 4, 2022, employers must require employees, except those working exclusively from home or outdoors, to be fully vaccinated against COVID-19, unless the employer chooses to adopt a policy requiring unvaccinated employees to undergo weekly viral testing and wear a face covering in the workplace. Employers are not required to permit this testing option.
- ▶ Employers must verify and maintain records of the vaccination status of each employee. Verification requires that the employee submit official documentation of their vaccination (e.g., CDC Vaccination Record Card, or proof of immunization issued by a health care provider or pharmacy). Self-attestation by employees is not a substitute for official documentation. Employers must retain a copy of the employee's proof of vaccination.
- ▶ Employer policies requiring vaccination must cover all employees except those employees: (1) for whom a vaccine is medically contraindicated; (2) for whom medical necessity requires a delay in vaccination; or (3) who are legally entitled to a reasonable accommodation under federal or state civil rights laws because they have a disability or sincerely held religious belief, practice, or observance that conflicts with vaccination.
- ▶ Employers must provide up to four hours of paid time off for employees to get vaccinated during normal work hours and to allow for reasonable time

and paid sick leave to recover from any side effects. Employers may require employees to use paid sick leave benefits already provided under employer policy or state law.

- ▶ If the employer allows employees to undergo weekly testing and use of face coverings in lieu of vaccination, it need not provide or pay for the testing or face coverings of employees who willingly forego vaccination and opt instead to test. Compliant testing does not include COVID-19 tests that are both self-administered and self-read, though an FDA approved home test that is processed by a laboratory is acceptable. Employees must provide official documentation of the test result.
- ▶ Employers must require any employee who receives a positive COVID-19 test result or other COVID-19 diagnosis to inform the employer immediately. All COVID-19 positive employees must be removed from the workplace, regardless of vaccination or symptomatic status. The employee may not return to the workplace until they (a) receive a negative result on a COVID-19 nucleic acid amplification test (NAAT); (b) meet the return-to-work criteria established by the CDC (which align with the current Cal/OSHA emergency temporary standards); or (c) obtain a return-to-work recommendation from a licensed healthcare provider.

The complete federal ETS can be found [here](#).

If you have any questions about the federal ETS or the anticipated State standards, please contact **Rebecca Green** or **Cassandra Lo**.