

HR Hotline: Federal OSHA Vaccine Mandate

Connecticut Business and Industries Association (CBIA)

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Discussion Topics

- Background
- Covered Employers
- Covered Employees
- General Requirements
- Consequences for Non-Compliance
- Status of ETS – Court Action
- Questions and Answers



Background

- OSHA published ETS on November 5, 2021
 - OSHA determined pandemic has created “grave danger” to worker safety
 - As an ETS, duration limited to six months
- Purpose is to minimize risk of transmission of COVID-19 in the workplace
- Requires covered employers to develop and enforce a policy requiring vaccination (or regular testing in lieu of vaccination)

Covered Employers and Employees

- Covered employers – Private employers with 100 or more employees, except:
 - Federal contractors (and subcontractors) covered by federal contractor mandatory vaccination rules
 - Healthcare employers covered by CMS Interim Final Rule
- Covered employees – All employees of a covered employer, except those who:
 - Do not report to a workplace where other individuals are present;
 - Are working from home; and
 - Work exclusively outdoors

General Requirements

- Develop, implement and enforce either:
 - Policy requiring vaccination for all covered employees; or
 - Policy in which covered employees may choose either vaccination or weekly testing
- Determine vaccination status of each employee
- Provide certain paid time off benefits
- Require prompt notification of any positive test

General Requirements

- Keep any EE who tests positive out of the workplace until they meet criteria to discontinue home isolation
- Require unvaccinated employees to wear face mask when indoors or in a vehicle with another individual for work purposes
- Provide information to employees about the ETS, the employer's policy and about vaccines in general
- OSHA reporting

General Requirements

□ Effective Dates

- Vaccination and testing requirements – January 4
- Other provisions – December 6
- Note: ETS will expire after six months

□ Penalties for non-compliance

- Penalties of up to \$13,654 per violation
- Additional penalties for willful or egregious non-compliance
- Potential individual-employee claims

Status of ETS

- Opponents of ETS filed numerous federal court actions
- Fifth Circuit Court of Appeals:
 - Issued temporary stay on November 6, 2021
 - Extended the stay on November 12, 2021, ordering OSHA not to implement or enforce ETS, pending further judicial review
- All cases have now been consolidated
 - Sixth Circuit Court selected (by lottery) to hear consolidated claims

Status of ETS

- For now, OSHA will not enforce, pending further action by the Sixth Circuit and/or Supreme Court
- **What should covered employers do now?**
- Helpful links:
 - <https://www.osha.gov/coronavirus/ets2>
 - www.carmodylaw.com
 - www.cbiam.com



Questions and Answers



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