

Employer Best Practices to Manage Vaccine Mandates

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I. Introduction

Vaccines reduce spread of COVID-19 and prevent against severe disease

Impending federal vaccine mandates

Real world business consequences to the mandates

II. OSHA ETS- Coverage

Which employers are covered?

- Employers with 100 or more employees
 - 100 employees at any time while ETS is in effect
 - 100 employees across all U.S. locations
 - 100 full and part time employees
 - Two or more related entities that handle safety matters as one company

Worker and Workplace Exclusions:

- Workplaces subject to the Safer Federal Task Force COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors.
- Workplaces where any employee provides healthcare services or healthcare support services when subject to the requirements of the Healthcare ETS
- Workers who telework, work exclusively outdoors, or do not report to workplace with other people present

III. OSHA ETS-Requirements

- a. Determine Vaccination Status of All Employees
- b. Require each vaccinated employee to provide proof of vaccination status.
- c. Maintain a record of each employee's vaccination status, preserve acceptable proof of vaccination for each employee, and maintain a roster of the vaccination status for each and every employee.

III. OSHA ETS-Requirements

- d. Testing and Notification/Removal for Positive Tests
- e. Masking for Employees Not Fully Vaccinated
- f. Leave for Vaccination and Recovery from Side Effects
- g. Develop and implement a written policy requiring employees to either be fully vaccinated or submit to COVID-19 testing.
- h. Notify employees of:
 - The requirements of the ETS, and the written policy;
 - The CDC’s document “Key Things to Know about COVID-19 Vaccines” on COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated;
 - Prohibitions on discharging, discriminating, or retaliating against an employee for reporting any work-related illnesses or violations of the ETS; and
 - Criminal penalties associated with knowingly supplying false statements or documents.

IV. Federal Contractor Vaccine Mandate

- Executive Order 14042- Covered federal contractors and subcontractors must follow guidance issued by the Safer Federal Workforce Task Force
- Safer Federal Workforce Task Force Guidance Requirements:
 - Full vaccination of covered contractor employees by January 18, 2022, except in limited circumstances where an employee is legally entitled to an accommodation;
 - Compliance by individuals, including covered contractor employees and visitors, with masking and physical distancing policies while in covered contractor workplaces; and
 - Designation by covered contractors of person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

V. CMS Vaccine Rule

- Covered facilities must have:
 - A process or plan for vaccinating all eligible staff
 - A process or plan for providing exemptions and accommodations for those who are exempt
 - A process or plan for tracking and documenting staff vaccinations.

VI. Litigation on OSHA ETS, Federal Contractor Vaccine Mandate, and CMS Rule

- OSHA ETS- Stayed Nationwide
- Federal Contractor Vaccine Mandate- Stayed Nationwide
- CMS Rule- Stayed Nationwide

VII. Considerations for Navigating Vaccine Mandates

What is your plan without government intervention?

Communicate with employees about what you are doing and why.

Find your trusted advisers to help you navigate the shifting legal landscape.

VIII. Recommendations for Creating and Implementing a Vaccination Policy

Are there any local or state requirements you must comply with?

Create a written policy with required exemptions.

Create a process for evaluating exemptions.

IX. Key Takeaways

- The vaccine landscape is changing and will likely continue to change.
- Decide what is best for your business and move forward monitoring changes in the law as needed.
- If you are on the fence, work now to be ready if the courts approve the federal mandates and force your hand.

Thank you!

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