

NACUBO Town Hall

November 10, 2021

Federal COVID-19 Vaccination Requirements

Megan Schneider, senior director, government affairs, NACUBO

Mary Bachinger, director, tax policy, NACUBO

Liz Clark, vice president, policy and research, NACUBO

A recording of this session and the slides will be posted online. You will find them, and other resources here: <https://www.nacubo.org/Topics/COVID-19>



Fifth Circuit Court of Appeals Temporarily Halts OSHA Employer Vaccination Mandate

November 6, 2021

- There are several actions pending in different federal courts across the nation.
- The Supreme Court, or a single federal court, is likely to issue a clear legal answer soon.
- Affected employers are encouraged to continue measures to be ready to comply.

OSHA Employer Vaccine Mandate

- New Emergency Temporary Standard (ETS) Rule Issued Nov. 5
 - Applicable to most private employers in all 50 states and to public employers in the 26 states where OSHA has jurisdiction, otherwise “just-as-effective measures” to be adopted.
 - Covered employers must develop, implement and enforce a mandatory COVID-19 vaccination policy, AND/OR a policy requiring employees to choose to either be vaccinated or undergo regular COVID-19 testing and wear a mask at work.
 - Covered employers include: employers with 100 or more employees including those employed by state and local governments
 - **January 4, 2022 deadline for full policy compliance, December 5, 2021 for compliance with masking requirements for unvaccinated individuals.**
 - Employers are NOT required to pay for testing (or masks) unless otherwise required to do so by other laws, regulations, collective bargaining agreements, or other collectively negotiated agreements.
 - ETS “preempt[s] any inconsistent state or local laws, including laws that ban or limit an employer’s authority to require vaccination, masks or testing.”

OSHA Employer Vaccine Mandate

- ETS requires that:
 - Employers determine the vaccination status of each employee, obtain acceptable proof of vaccination status from vaccinated employees and maintain records and a roster of each employee's vaccination status.
 - Employees must provide prompt notice when they test positive for COVID-19 or receive a COVID-19 diagnosis.
 - Employers must then remove the employee from the workplace, regardless of vaccination status; employers must not allow them to return to work until they meet required criteria.
 - Ensure each worker who is not fully vaccinated is tested for COVID-19 at least weekly (if the worker is in the workplace at least once a week) or within 7 days before returning to work (if the worker is away from the workplace for a week or longer).
 - Ensure that, in most circumstances, each employee who has not been fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes.

OSHA Employer Vaccine Mandate

Who's covered?

Any employers with 100 or more employees at any time on or after November 5, 2021, including state and local employers. All full and part-time employees, at all locations, including student workers and remote workers count for the threshold.

Exceptions:

- Any workplace providing healthcare services that are covered by HHS interim final rule for healthcare workers.
- Any workplace covered by the Safer Federal Workplace Task Force guidance for federal contractors.
- Public employers in states *without* OSHA-approved state plans.

OSHA Employer Vaccine Mandate

Which employees does the standard apply to?

- Full- and part-time employees that report to a workplace where coworkers or others are present
- Temporary and seasonal workers
- Student employees
- Exceptions from vaccination/testing requirement for employees who:
 - work exclusively from home
 - do not report to a workplace where others are present or
 - work exclusively outdoors

EEOC on Religious Accommodations

[EEOC Guidance](#) released on religious accommodations

Updated on October 28, 2021

- Employees and applicants must inform their employers if they seek an exception to a vaccine requirement due to a sincerely held religious belief.
- Employers must consider requests for religious accommodations but are not required to consider social, political, or economic views, or personal preferences of employees who seek exceptions to a COVID-19 vaccination requirement.
- Employers that demonstrate “undue hardship” are not required to accommodate an employee’s request for a religious accommodation.

Federal Resources on Employer Vaccine Mandate

- [Full OSHA ETS](#)
- [Summary of OSHA ETS](#)
- [OSHA Webinar](#)
- [OSHA FAQ](#)
- [EEOC Medical Accommodations](#) and [Religious Exemptions](#) Guidance
- [Additional OSHA Compliance Materials](#) (and other resources like policy templates, fact sheets, social media tools, etc.)

HHS Guidance on Healthcare Workers

- [Interim Final Rule](#)

- Provides guidance applicable to healthcare workers at facilities participating in Medicare and Medicaid
- Requires full vaccination of healthcare employees, and applies to employees whether their positions are clinical or non-clinical and includes employees, students, trainees and volunteers who work at a covered facility.
- Also includes individuals who provide treatment or other services for the facility under contract or other arrangements.
- Most typical covered facilities are hospitals, ambulatory surgery centers, dialysis facilities, home health agencies and long-term care facilities.

Federal Contractor Vaccine Mandate

- Federal contractors will also need covered employees in compliance with similar regulations by **January 4, 2022** for current contracts valued at over \$250,000 and by the first date of the contract for all subsequent contracts.
 - Colleges and universities should closely review their federal engagements to determine if any require compliance with this mandate.
 - Must include provisions mandating vaccinations and other protocols for both contractors' and subcontractors' employees, including student employees.
 - And those with whom they may come into contact
 - Federal contractor employers who may otherwise fall under the OSHA ETS covered employer definition will not be required to follow the rules established under the ETS, and must continue compliance with the vaccination guidance and requirements set forth by the EO and Safer Federal Workforce Task Force for federal contractors.
 - Safer Federal Workforce Task Force [Guidance](#)
 - Full [EO](#) for federal contractors

Contractor Mandate vs ETS

- The requirements under the federal contractor mandate are slightly more stringent than those of the ETS.
 - Accommodations made only for a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance—no testing opt out for others.
 - Covered contractors should review and consider what, if any, accommodation it must offer.
 - Safety protocol signage posting at covered workplaces
 - Protocols for fully vaccinated and not fully vaccinated individuals, including the Task Force’s guidance on masking and physical distancing
 - Instruction on appropriate workplace safety protocols while at the covered contractor workplace, and a plan to communicate safety rules to visitors prior to their arrival at a covered contractor workplace, or requiring all visitors to follow masking and physical distancing protocols for not fully vaccinated individuals.

Resources on Federal Contractor Vaccine Mandate

- Safer Federal Workforce Task Force [Guidance](#)
- Full [Executive Order](#) for federal contractors

Thank you!

Look for updates in *Current*

Contact NACUBO's policy team: advocacy@nacubo.org

A recording of this session and the slides will be posted online. You will find them, and other resources here: <https://www.nacubo.org/Topics/COVID-19>

