

WEBINAR SERIES

The Latest Vaccine Mandate from OSHA

November 17, 2021



PrestigePEO Webinar

Today's Presenters



Melissa Yannalfo

Melissa Yannalfo, Client Success Specialist - Host

Melissa Yannalfo is the Client Success Specialist at PrestigePEO. Melissa has an extensive background in account management with a focus on Human Resources and has a dedicated focus on the client experience through a holistic approach to the PEO Service Model. Melissa has been with Prestige for 3 years.



Thom Stohler

Thom Stohler, Vice President, Federal Government Affairs NAPEO - Presenter

Mr. Thom Stohler, Vice President, Federal Government Affairs National Association of Professional Employers Organizations (NAPEO). Mr. Stohler currently serves on the U.S. Chamber of Commerce Employee Benefits and Labor Relations Committees, as well as on the SHRM Labor Relations Committee. Thom served in the George W. Bush Administration as a Senior Legislative Officer and as Acting Assistant Secretary of Occupational Safety at OSHA.

Today's Agenda

OSHA ETS

- Current status of the OSHA ETS
- What is an ETS
- Overview of the regulation

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted on our website under [PrestigePEO.com/webinars](https://www.PrestigePEO.com/webinars)



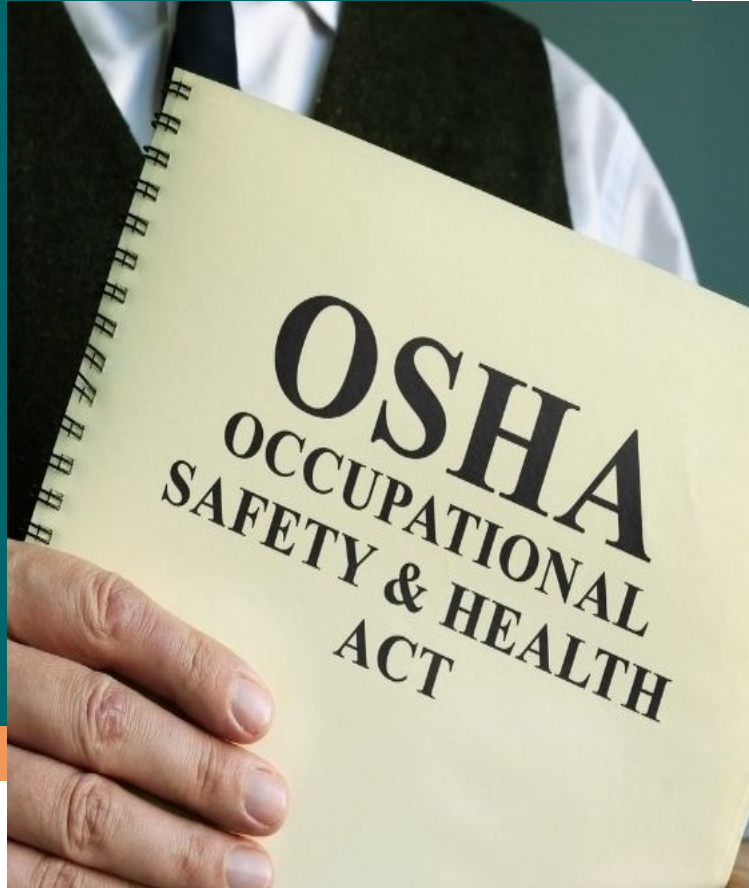
**OSHA Emergency
Temporary Standard**

OSHA ETS

- Current Status of the ETS
 - 5th Circuit Permanent Stay
 - “Lottery” – assigned to the 6th Circuit (all the cases that have been filed)
- Two Issues
 - Keep the stay?
 - Merits of claims against the standard



OSHA ETS



What is an Emergency Temporary Standard (ETS)?

- The OSH Act permits the agency to issue an ETS if OSHA determines that a “grave danger” to worker safety exists.
- An ETS does not go through the typical notice-and-comment period that federal regulations usually follow – effective upon publication in the Federal Register
- ETS is effective as long as the grave danger exists.
- ETS is also a proposed rule and OSHA is required to issue a final rule six months after ETS is issued
- OSHA has issued 11 ETS (2 this year); 4 were stayed; one was partially stayed
- Prior to this year, OSHA had not issued an ETS since 1984

OSHA ETS

- This standard is intended to establish minimum vaccination, vaccination verification, face covering, and testing requirements to address COVID-19 in the workplace, and ...
- It preempts state and local requirements relating to these issues, including requirements that ban or limit employers' authority to require vaccination, face covering, or testing, regardless of the number of employees.



OSHA ETS

- The ETS requires private employers with more than 100 employees to either mandate covered employees be fully vaccinated against COVID-19 or require covered employees that are not fully vaccinated to test for COVID-19 at least weekly and wear a face covering.
- As part of OSHA's ETS, employers must also:
 - Establish, implement, and enforce a written policy on vaccines, testing, and face coverings;
 - Provide certain information to employees on vaccines and the requirements of the ETS
 - Provide paid time off to employees to obtain the vaccine and reasonable time and paid sick leave to recover from side effects experienced following any primary vaccination series dose to each employee for each dose;
 - Obtain and maintain records and roster of employee vaccination status; and
 - Comply with certain notice requirements when there is a positive COVID-19 case and reporting to OSHA when there is an employee work-related COVID-19 fatality or hospitalization.

The OSHA logo features a stylized blue and grey circular icon to the left of the word "OSHA" in a bold, black, serif font. A registered trademark symbol (®) is positioned to the upper right of the "A".

OSHA®



ETS Coverage

- All private employers with 100 or more employees must comply with the ETS, unless they meet one of the limited exceptions.
- Federal contractors covered by the federal contractor mandate and healthcare employers covered by the Healthcare ETS are not covered by the ETS.
- Many employers who are covered by the Healthcare ETS must comply with emergency regulations issued by CMS, which are applicable to participants in the Medicare or Medicaid programs.

OSHA ETS

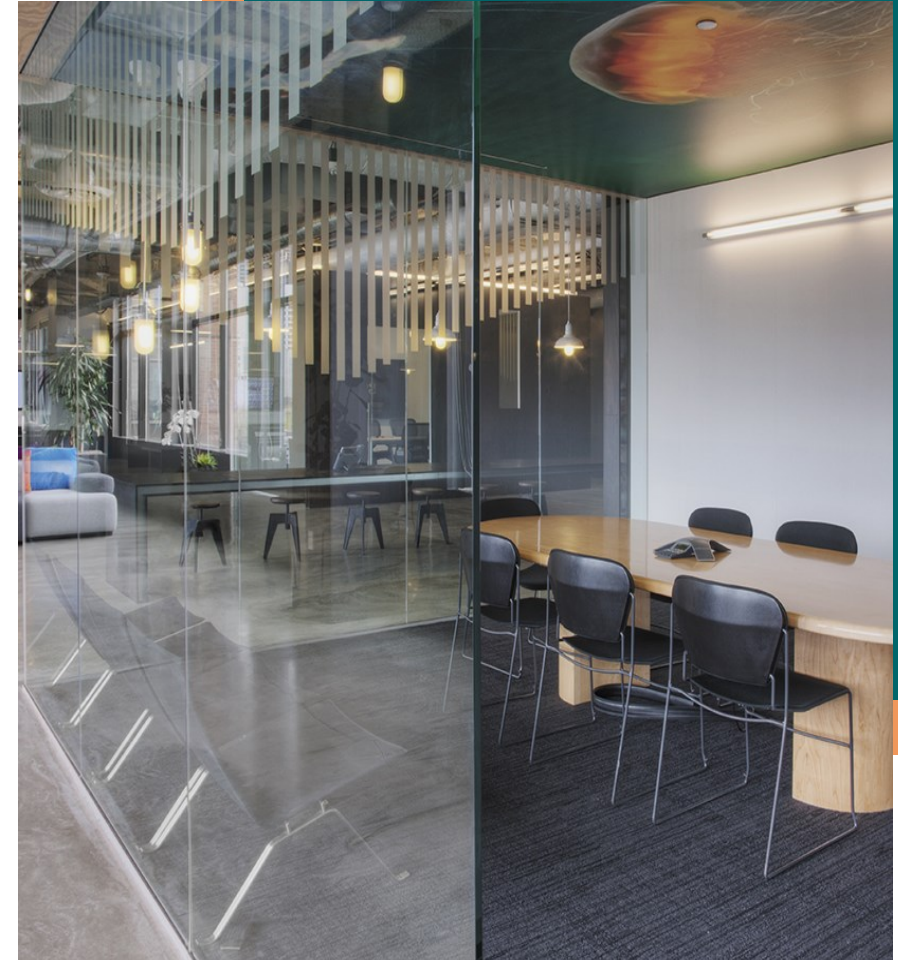


- The requirements of the ETS do not apply to the employees of covered employers:
 - Who do not report to a workplace where other individuals such as coworkers or customers are present;
 - While working from home; or
 - Who work exclusively outdoors.



OSHA ETS

- *Workplace* means a physical location (e.g., fixed, mobile) where the employer's work or operations are performed. It does not include an employee's residence.
- Coverage
 - 100 employees is based on employees at the employer level (firm- or corporate-wide), not the individual location level.
 - Part-time employees count towards the total number of employees.
 - Independent contractors do not count towards the total number of employees.
 - Employees working from home or remotely are included in the total employee count



OSHA ETS



Employer policy on vaccination

- The employer must establish, implement, and enforce a written mandatory vaccination policy.
- The written vaccine policy should address the applicable requirements in the standard, including:
 - vaccination;
 - applicable exclusions from the written policy (e.g., medical contraindications, medical necessity requiring delay in vaccination, or reasonable accommodations for workers with disabilities or sincerely held religious beliefs);
 - Information on determining vaccination status and how this information will be collected;
 - Paid time and sick leave for vaccination purposes

Medical/Religious Accommodations

Federal law requires that you would still need to consider and possibly accommodate valid medical and religious accommodation requests if an employee requests to be exempted from the vaccination requirement. Your COVID policy should include provisions explaining how employees can request exemptions in the form of accommodations based on medical or religious reasons.

- The Americans with Disabilities Act (ADA) establishes the federal framework applicable to evaluating accommodation requests based on medical reasons.
- Title VII of Civil Rights Act of 1964 (Title VII), as amended, provides the basis for requests for reasonable accommodation based on religion.
- State or local laws may provide similar protections.



Employer policy on vaccination

- Notification of positive COVID-19 tests and removal of COVID-19 positive employees from the workplace;
- Information to be provided to employees
- The employer should include information regarding the effective date, who the policy applies to, deadlines (e.g., for submitting vaccination information, for getting vaccinated), and procedures for compliance and enforcement, all of which are necessary components of an effective plan.
- Any employee who does not provide one of the acceptable forms of proof of vaccination status must be treated as not fully vaccinated.
- Employer must maintain a record of each employee's vaccination status and must preserve acceptable proof of the vaccine.
- The employer must maintain a roster of each employee's vaccination status.

These records and roster are considered employee medical records and must be maintained as such records in accordance with §1910.1020

OSHA ETS

What is valid proof of a vaccination?

- A copy of the record of immunization from a health care provider or pharmacy.
- A copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r).
- A copy of medical records documenting the vaccination.
- A copy of immunization records from a public health or state immunization information system.
- A copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine.
- Employers can accept a written attestation from a worker stating that they are vaccinated as “proof.



Unvaccinated Employees

- Employers must ensure that each employee not fully vaccinated and who reports at least once every 7 days to a workplace where other individuals such as coworkers or customers are present:
 - Must be tested for COVID-19 at least once every 7 days; and
 - Must provide documentation of the most recent COVID-19 test result to the employer no later than the 7th day following the date on which the employee last provided a test result.
 - An employee who does not report during a period of 7 or more days to a workplace (e.g., teleworking for two weeks prior to reporting to a workplace with others) must be tested for COVID-19 within 7 days prior to returning to the workplace

OSHA ETS

Unvaccinated Employees

- The testing requirement does not require the employer to pay for any costs associated with testing; **however, employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.**
- This section does not prohibit the employer from paying for costs associated with testing.



Positive COVID test and removal

An employer must:

- Require each employee to promptly notify the employer when they receive a positive COVID-19 test or are diagnosed with COVID-19 by a licensed healthcare provider; and
- Immediately remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider and keep the employee removed until the employee:
 - Receives a negative result on a COVID-19 nucleic acid amplification test (NAAT) following a positive result on a COVID-19 antigen test if the employee chooses to seek a NAAT test for confirmatory testing;
 - Meets the return-to-work criteria in CDC’s “Isolation Guidance;” or
 - Receives a recommendation to return to work from a licensed healthcare provider.

Note: Employers are not required to provide paid time to any employee for removal as a result of a positive COVID-19 test or diagnosis of COVID-19; however, paid time may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.

OSHA ETS

Face coverings

The employer must ensure that each employee who is not fully vaccinated wears a face covering when indoors and when occupying a vehicle with another person for work purposes, except:

- When an employee is alone in a room with floor to ceiling walls and a closed door.
- For a limited time while the employee is eating or drinking at the workplace or for identification purposes in compliance with safety and security requirements.
- When an employee is wearing a respirator or facemask.
- Where the use of face coverings is infeasible or creates a greater hazard (e.g., when it is important to see the employee's mouth for reasons related to their job duties, when the work requires the use of the employee's uncovered mouth, or when the use of a face covering presents a risk of serious injury or death to the employee).

NOTICE

FOR THE HEALTH AND SAFETY OF ONE ANOTHER



FACE MASK REQUIRED

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OSHA Mandate Effective Jan 4, 2022

Effective Date of the ETS

- The ETS takes effect on November 5, 2021. Enforcement begins December 6, 2021 for all portions of the ETS other than testing and vaccination compliance date, which starts January 4, 2022.
- The ETS can only remain in place for six months. After that time, it must be replaced by a permanent OSHA standard, which must undergo a formal rulemaking process involving a typical notice-and-comment period during that six-month period.

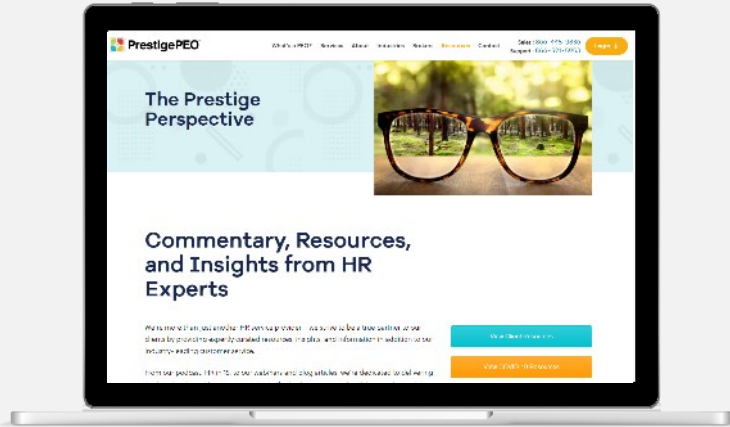
OSHA ETS – So should I comply?



- OSHA must refrain from enforcing the ETS until the stay is removed or the cases are decided in the agency's favor.
- It is likely that a final court decision on the ETS will not be made for weeks – possibly months.
- OSHA will most likely have little patience with non-compliant employers who claim they held off implementing the mandate-or-test rule while awaiting a final court ruling
- The earliest effective date for any of the ETS requirements is December 5, which includes the need to have a vaccination policy and various other technical standards in place.
- You will be hard pressed to develop these materials overnight, so spend this time efficiently and be prepared to comply should the ETS ultimately be upheld.
- Your best course of action is to familiarize yourself with the requirements of the OSHA ETS and prepare to implement those requirements if the stay is lifted and the emergency rule is revived

Questions / Comments / Discussion?

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