

OSHA Vaccine ETS in Effect for Large Employers

A COVID-19 Communication from Questco - December 22, 2021

On Friday, December 17, a federal appeals court reinstated the Biden administration's vaccine and testing requirement for private businesses with at least 100 employees. The ruling by the Sixth U.S. Court of Appeals lifted a November injunction which previously blocked the rule issued by the Occupational Safety and Health Administration (OSHA).

Later in the evening, an appeal to the US Supreme Court was lodged and since that time several requests for reinstatement of the stay have been filed. On Monday morning, the Supreme Court set a December 30 deadline to submit briefings on the issue; however, there is no definitive answer as to when this matter will be resolved by the Supreme Court.

In the decision issued Friday evening, the Sixth Circuit noted that OSHA has historical precedent for using wide discretion to ensure worker safety and "demonstrated the pervasive danger that COVID-19 poses to workers—unvaccinated workers in particular—in their workplaces."

OSHA has updated its website as follows: "To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10, 2022 and will not issue citations for noncompliance with the standard's testing requirements before February 9, 2022, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance."

What's Next?

While there remains a great deal of uncertainty as to whether the full Sixth Circuit or the Supreme Court will ultimately toss or uphold the ETS, it's important to understand that the mandate-or-test ETS is **in effect now** in Federal OSHA jurisdictions. As noted above, as long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard, OSHA will not engage in any enforcement activity before January 10. If you are a covered employer, your immediate job is to demonstrate good faith efforts to comply with the requirements, including implementing a compliant vaccination policy between now and January 10, with the goal to put into effect testing requirements no later than February 9.

To aid in your preparation for compliance with the ETS, we have provided various compliance tools, including sample policy templates, which can be accessed via the links below and by visiting our [COVID-19 Resource Page](#).

- [Compliance Bulletin on OSHA recordkeeping requirements for ETS](#)
- [Compliance Bulletin on requirements for vaccine & testing ETS paid time off](#)
- [ETS COVID-19 vaccination tracker](#)
- [ETS letter for large employers to employees](#)
- [ETS letter for small employers to employees](#)
- [COVID-19 religious exemption request form](#)
- [COVID-19 Mandatory Vaccination Policy template](#)

Information provided herein is intended for informational purposes only and does not constitute legal advice or opinion, nor is it a substitute for the professional judgment of an attorney or accountant.



If you are interested in learning about an **automated tool** that can assist you in tracking vaccination and testing status for your employee population, please contact your Client Success Manager for more information.

Questco is committed to ensuring that our clients are in compliance with all government mandated COVID-19 worksite requirements. We will keep you apprised of all future developments surrounding vaccination mandates in the workplace. Please reach out to your Client Success Manager with any immediate questions.

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