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## **Employment Update: OSHA Releases COVID-19 Workplace Vaccine and Testing**

This morning the White House released the highly anticipated emergency OSHA regulations (also called “emergency temporary standards” or ETS) which carries out President Biden’s directive that all employers with 100 or more employees require their workers to be vaccinated against COVID-19 or get tested weekly.

The ETS includes the following requirements for employers with 100 or more employees:

- Employers must implement a compliant vaccination policy by December 5
  - A compliant vaccination policy must be in writing and can either:
    - (1) require all workers to be fully vaccinated; OR
    - (2) allow employees to either be fully vaccinated against COVID-19 or provide results from a COVID-19 test at least every seven days.
  - The policy must allow for exemptions to the vaccine requirement when medically required, or when an employee is entitled to a reasonable accommodation due to a disability or sincerely held religious belief.
- The ETS does not apply to workers covered by different federal vaccination laws (such as federal employees and healthcare workers), or to employees that work exclusively outdoors, work from home, or work in a workplace where no others are present.
- All unvaccinated workers must begin to provide employers with a negative COVID-19 test on a weekly basis beginning January 4 and wear a face covering while in the workplace (Cal/OSHA already requires unvaccinated individuals to wear face coverings in the workplace so this is not a change for CA employers). To avoid weekly testing employers may issue a mandatory vaccination policy that does not contain an automatic testing option.
- By December 5 employers must have and continue to maintain a record of each employee’s vaccination status and maintain proof of vaccination for each employee who is vaccinated. The rules are specific about the type of proof required. It includes the actual evidence of the immunization through the COVID-19 Vaccination Records Card, or health care record documenting vaccination or a specific attestation under penalty of perjury that the employee is fully vaccinated and has either lost or otherwise cannot produce the written record.
- Employers must provide up to 4 hours of paid time, including travel time, at employee’s regular rate of pay in order to get the vaccination, and a reasonable amount of paid sick time to recover from any side effects from the vaccine.
- The ETS does not require employers to pay for or provide the tests, unless it is required by state law. Since California employers are already required to pay for testing for employees, including the time to take the test, travel time, and the cost of the test if any, this will still be required under the ETS.
  - The ETS allows the use of “at home” or self-administered tests, but only if the test is either processed by a lab, or the collection and processing is observed by the employer or an authorized proctor (either over the counter or telehealth).

- The ETS also requires employers to report work-related COVID-19 fatalities to OSHA within 8 hours, and work-related COVID-19 in-patient hospitalizations within 24 hours.

Note that legal challenges to the new ETS are expected, which may delay or otherwise impact the deadlines for compliance with the ETS stated above. Cal/OSHA is also expected to implement its own rules, which would likely be in effect even if the federal rule is challenged. We will continue to keep you updated.

More information about OSHA's new ETS can be found here: <https://www.osha.gov/coronavirus/ets2>

As always, if you have specific questions about the ETS or its applicability to your company, please contact us to discuss your specific situation.