



Federal Mandate Issued for Large Employers: Q&A with OSHA Staff

This week, President Biden released a plan to address the COVID-19 pandemic. Within that plan <https://www.whitehouse.gov/covidplan/> is an Executive Order mandating that employers with 100 employees or more be vaccinated or test negative for the virus. Specifics regarding the pending rule are outlined below:

“The Department of Labor’s Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.”

The ETS will be available within a few weeks and be effective immediately. The public comment period will begin once the ETS goes into effect.

During a briefing with OSHA staff, questions were raised about the rule and guidance for employers. Staff shared that a process would be established for providing guidance soon. Below includes details on a Q&A session with OSHA staff regarding the recently announced mandate:

General comments by OSHA staff:

- OSHA will be working quickly to develop the emergency temp standard (ETS) that will cover employers with at least 100 employees
 - Must ensure all employees are vaccinated or weekly tested
 - Employers must require paid time leave to get vaccinated and also paid leave if people have bad side effects – these new requirements will be in ETS
 - OSHA’s ETS will have guidelines to work closely with people who cannot get vaccination (religious reasons, allergic, etc)

- When OSHA promulgates an ETS, State plans must ensure that their plans are identical or as effective as the new ETS
- During the weeks ahead, the President will announce more steps to build on these details.
- In regard to whether employers or employees will be required to pay for testing that is still unknown. Details will be in the standard when issued.

Q&A with OSHA staff:

- Q: How soon will the ETS be released?
 - A: As expeditiously as OSHA can issue one, President said in coming weeks
- Q: Can stakeholders give input on ETS?
 - A: In this case, NO. President wants OSHA to issue as fast as possible. They have listened to stakeholders for the last 8 months and don't have time to do that again. However, the ETS will ask for people to file comments when timing is appropriate..
- Q: On 100 employees threshold, is that per company or per work site?
 - A: This is PER company
- Q: OSHA ETS and forthcoming contractor rules – will they be consistent?
 - A: Yes, they will be consistent. To the extent an employer is subject to more than one rule, they will be expected to comply with all of them.
- Q: Will this apply to remote workers?
 - A: no, not for employees that never come into work. If they permanently work from home, this does not apply.
- Q: What will the verification process be for vaccinations?
 - A: Unknown as of yet.
- Q: Is the mandate satisfied after the first vaccination dose?
 - A: Unknown as of yet. We encourage employers to start mandating vaccine policies as soon as possible to get ahead of the rule.
- Q: Can employers require vaccination for workers instead of the option of a weekly test?
 - A: Employers can require this, and many already are. There are workers who might be entitled to accommodation (religious reasons, allergies).
- Q: if an employee refuses vaccine or weekly testing, can employer terminate an employee? And would employee be entitled to unemployment insurance benefits?
 - A: This is outside of the ETS scope. It is up to the employer to determine how to enforce it/discipline it. It depends on the state employment agency for how to handle employees who refuse either.
- Q: Will this be subject to collective bargaining for employees that have CBAS?
 - These will not change those obligations, similar to other OSHA standards.

Once the ETS is released, the Colorado Chamber will share with its members. In the meantime, please contact Loren Furman at lfurman@cochamber.com if you should have questions regarding this matter. We will share those questions with OSHA staff and our national partners including the US Chamber and NAM to get more guidance for Colorado employers.

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Colorado Chamber of Commerce
www.cochamber.com
 P: (303) 831-7411
 F: (303) 860-1439

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