Employer Vaccine Mandate

National Policy Update | November 10, 2022
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Centers for Medicare and Medicaid (CMS)
Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule

Key Points:

• Applies to all Medicare and Medicaid providers and facilities
• Staff required to be vaccinated w/ exemptions accepted; no test-out option
• First Compliance Deadline: 30 days after regulation is published- all staff receiving at least one dose (December 5)
• Second Compliance Deadline: 60 days after regulation published- all staff complete primary vaccination series (January 4)
FAQ on Healthcare Vaccination Mandate

Q. What are the compliance deadlines?
- November 5th: Emergency Regulation becomes effective
- December 6th: Facilities must have process or plans in place for vaccinating staff, exemptions, accommodations and tracking; staff must have received primary vaccinations
- January 4th: Staff must be fully vaccinated

Q. Which employees need to be vaccinated?
- All current and new staff working at the facility
- Staff performing duties offsite
- Individuals who enter into a CMS facility (i.e. physicians treating patients onsite)
FAQ on Healthcare Vaccination Mandate

Q. How will this rule interact with other regulations and requirements?

✔ Facilities participating in Medicare & Medicaid programs regulated by CMS are governed first by the IRF

✔ Non-Medicare/Medicaid certified health care facilities fall under the federal contractor or OSHA ETS for health care facilities

✔ If none of the above apply, employers subject to OSHA ETS for large employers

✔ IFR pre-empts any state or local law
<table>
<thead>
<tr>
<th>Federal Contractor Mandate</th>
<th>CMS Interim Final Rule for Healthcare Facilities</th>
<th>OSHA Emergency Temporary Standard</th>
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<tbody>
<tr>
<td>• Applies to full or part-time federal contractors</td>
<td>• Applies to Medicaid and Medicare certified health care facilities</td>
<td>• Applies to employers with 100 or more employees in each of the 26 states that submit occupational safety plans to OSHA</td>
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<td>• Governed by the Safer Federal Workforce Task Force Guidance</td>
<td>• Includes county run hospitals and health care clinics</td>
<td>• Counties in each of the 26 states fall under the jurisdiction of this standard</td>
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<td>• Counties receiving federal funding <em>not</em> considered contractors</td>
<td>• Exemptions made by no testing options</td>
<td>• Exemptions &amp; regular testing options</td>
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OSHA Emergency Temporary Standard for Large Employers

Key Points:

• Applies to all employers with 100 or more employees “Firm or company wide”

• Counties in the 26 states with OSHA-approved state plans also impacted

• Requires large employers to develop, implement, enforce COVID-19 vaccination or testing

• Does not preempt state and local laws that go beyond guidelines under ETS
Definitions in the Emergency Temporary Standard

**COVID-19 Test:**
- Authorized by FDA for emergency use
- Administered according to authorized instructions
- Not self administered/self read

**Fully Vaccinated:**
- Individual is 2 weeks after completion of primary vaccination
- Completion of second dose for a 2-dose vaccine
- Completion of initial dose vaccination for one dose vaccines
Overview of Employer Vaccination Policies

- Mandatory vaccination policies require each employee to be fully vaccinated, outside of exemption
- ETS requires employers to provide employee with reasonable paid time off for vaccinations
- Policies must provide option of regular testing and masking
- Employers must provide employees with information about the ETS

“OSHA implores employers to remove logistical barriers to vaccination and incentivize employees”
Key Deadlines Under the ETS

- **5 Nov.**: ETS goes into effect and is published in Federal Register
- **20 Nov.**: Plan for compliance in place
- **5 Dec.**: Implementation of employer vaccination policy & paid leave to employees
- **4 Jan.**: All employees must be fully vaccinated or begin weekly testing
Penalties & Enforcement

**Penalties**
- OSHA may fine non-compliant covered employers up to $13,653 for each violation of the standard.
- Employers with repeat violations fined up to $136,532 per violation

**Enforcement**
- An emergency temporary standard can only remain in effect for six months
- After six months ETS will be replaced with permanent standard
**Overview**

On September 9, the Biden administration announced a new COVID-19 Action Plan, titled "The Path Out of the Pandemic." The plan takes a six-pronged approach to combat COVID-19, which includes advancing COVID-19 mitigation and response efforts through vaccination and masking, keeping schools safely open and bolstering our economic recovery.

**Find NACo’s Latest COVID-19 Vaccine Resources**

- COVID-19 Vaccine Resource Hub
- COVID-19 Recovery Clearinghouse
- Explore All NACo Health Resources
NACo Resources

Federal Contract Mandate Overview

CMS Healthcare IFR Overview

100+ Employer Vaccine Mandate Overview
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