

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

Contents (clicking on the titles below will take you directly to the relevant section)

- I. [Background and Summary](#)
- II. [Comments](#)
- III. [Compliance Dates and Timelines](#)
- IV. [Scope and Application](#)
- V. [Determining 100 Employee Count](#)
- VI. [Exceptions](#)
- VII. [Impact on Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#)
- VIII. [Regulatory Requirements](#)
 - a. [Employer Policy on Vaccinations, and Information Provided to Employees](#)
 - b. [Determining Employee Vaccination Status](#)
 - c. [Employer Support for Employee Vaccination](#)
 - d. [COVID-19 Testing for Employees who are Not Fully Vaccinated.](#)
 - e. [Employee notification to employer of a positive COVID-19 test and removal.](#)
 - f. [Face Coverings](#)
 - g. [Information provided to employees.](#)
 - h. [Reporting COVID-19 fatalities and hospitalizations to OSHA.](#)
 - i. [Recording Adverse Reactions to COVID-19 Vaccination on the OSHA 300 Log](#)
 - j. [Availability of records](#)
- IX. [Additional Resources \(AGC, OSHA and EEOC Accommodations Guidance\)](#)

Background and Summary

****LATEST UPDATE: On January 13, the Supreme Court reinstate the nationwide stay. As a result, OSHA can no longer implement or enforce the ETS perhaps until and unless there is a finding in the lower court that the ETS is valid on the merits.****

The Occupational Safety and Health Administration (OSHA) has issued an emergency temporary standard (ETS) intended to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID-19 by mandating vaccinations or regularly testing of unvaccinated employees. Covered employers must develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to either get vaccinated or elect to undergo COVID-19 testing once every seven (7) days and wear a face covering at work in lieu of vaccination.

According to OSHA, the ETS was issued in response to an unprecedented health crisis that has resulted in a global pandemic severely impacting the health and wellbeing of people in the United States, and globally. The vaccine and testing mandate was issued based on OSHA's determination that employees in the United States face a **grave danger** from workplace exposures to SARS-CoV-2, that the ETS is necessary to protect those workers, and that the measures for vaccination, vaccine verification, face

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

coverings, and testing will help ensure that workers covered by the ETS are protected from severe illness and death resulting from contracting COVID-19 in the workplace.

Comments

The ETS serves as a proposal under Section 6(b) of the OSH Act for a final standard. Accordingly, OSHA seeks comment on all aspects of this ETS and whether it should be adopted as a final standard. OSHA encourages commenters to explain why they support or oppose particular policy choices, and include any relevant studies, experiences, anecdotes or size determination.

Comments on the ETS are due by Wednesday, January 19, and AGC will be submitting comments accordingly to continue [raising concerns](#) previously expressed to administration officials. In addition, AGC will explore all options available to it to advocate for its members' interests.

Compliance Dates and Timelines

The ETS initially established two separate dates for compliance with the ETS: (1) December 6, 2021; and (2) January 4, 2022. As a result of litigation, the Fifth Circuit Court of Appeals issued a nationwide stay on November 4, 2021. Thirty-four lawsuits were filed against the ETS—including AGC of America's lawsuit—and were randomly consolidated into the Sixth Circuit Court of Appeals. The Sixth Circuit removed the stay of the ETS, at which point OSHA announced two new separate dates for compliance with the ETS: (1) January 10, 2022; and (2) February 9, 2022. The Sixth Circuit's removal of the stay was appealed to the Supreme Court, which heard oral arguments on January 7.

On January 13, the Supreme Court reinstate the nationwide stay. As a result, OSHA can no longer implement or enforce the ETS perhaps until and unless there is a finding in the lower court that the ETS is valid on the merits. That litigation may take months.

U.S. Department of Labor Secretary Walsh has indicated that “[e]mployers are responsible for the safety of their workers on the job, and OSHA has comprehensive [COVID-19 guidance](#) to help them uphold their obligation.” The Secretary also notes that, “regardless of the ultimate outcome of these proceedings, OSHA will do everything in its existing authority to hold businesses accountable for protecting workers, including under the [Covid-19 National Emphasis Program](#) and [General Duty Clause](#).”

It is unclear at the moment if OSHA will continue to defend the ETS. However, it is anticipated that OSHA takes steps to issue a permanent standard, as noted above. Much is uncertain at the moment, but AGC remains actively engaged and will provide updates.

For more information on the ETS, in the event the event construction contracts must comply with it, please see the information below.

Scope and Application

The emergency temporary standard ETS applies to all employers that have a total of at least 100 employees at any time the ETS is in effect. The ETS covers employers in all workplaces that are under OSHA's authority and jurisdiction, including industries as diverse as manufacturing, retail, delivery services, warehouses, meatpacking, agriculture, **construction**, logging, maritime, and healthcare, with

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

the exception of healthcare and healthcare support industry sectors, which have their own COVID-19 ETS.

Determining 100 Employee Count

The applicability of this ETS is based on the size of an employer, in terms of number of employees, rather than on the type or number of workplaces. In determining the number of employees, employers must include all employees across all of their U.S. locations, regardless of employees' vaccination status or where they perform their work.

On a typical multi-employer worksite such as a construction site, each company represented – the host employer, the general contractor, and each subcontractor – would only need to count its own employees, and the host employer and general contractor would not need to count the total number of workers at each site.

In scenarios in which employees of a staffing agency are placed at a host employer location, only the staffing agency would count these jointly employed workers for purposes of the 100-employee threshold for coverage under this ETS. For a single corporate entity with multiple locations, all employees at all locations are counted for purposes of the 100-employee threshold for coverage under this ETS.

NOTE: Once an employer has come within the scope of the ETS, the standard continues to apply for the remainder of the time the standard is in effect, regardless of fluctuations in the size of the employer's workforce. For example, an employer that has 103 employees on the effective date of the standard, but then loses four within the next month, would continue to be covered by the ETS.

Exceptions

The ETS provides that, even where the standard applies to a particular employer, its requirements do not apply to employees:

- 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 intends these provisions to exempt workplace settings where workers do not interact indoors with other individuals, and to exempt work performed in the employee's home regardless of whether other individuals may be present in the home.

According to OSHA, on a construction site, workers inside a partially complete structure are not truly outdoors, and some individuals on a construction site may spend significant amounts of time in a construction trailer where other individuals are present. Workers at outdoor locations may also routinely share work vehicles. These indoor exposures could account for COVID-19 clusters among employees at worksites otherwise characterized as being outdoors. And employees whose outdoor time is interrupted by the indoor periods will still be subject to the requirements in this ETS.

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

However, if an employee works outdoors for the duration of every workday except for insignificant use of indoor spaces where other individuals may be present – such as a multi-stall bathroom or an administrative office – that employee would be considered to work exclusively outdoors and covered by the exemption as long as time spent indoors is brief, or occurs exclusively in the employee’s home (e.g., a lunch break at home).

Extremely brief periods of indoor work would not normally expose employees to a high risk of contracting COVID-19; however, OSHA will look at cumulative time spent indoors to determine whether that time is de minimis. Thus, if there are several brief periods in a day when an employee goes inside, OSHA will total those periods of time when determining whether the exception for exclusively outdoors work applies.

Finally, to qualify for this exception, the employee’s work must truly occur “outdoors,” which would not include buildings under construction where substantial portions of the structure are in place, such as walls and ceiling elements that would impede the natural flow of fresh air at the worksite.

Impact on Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors

This ETS does not apply to workplaces covered by the [Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#).

With limited exceptions, such as where a medical condition, disability, or sincerely held religious belief would prevent an employee from complying with certain provisions, those guidelines require covered contractors to ensure that all covered contractor employees:

- Are fully vaccinated by January 4, 2022 (**This date has been indefinitely delayed as a result of a nationwide stay issued on December 7, 2021, by a federal court in Georgia**);
- Follow CDC guidelines for masks and physical distancing, including masking and distancing requirements based on the employee’s vaccination status and the level of community transmission of COVID-19 where the workplace is located; and
- Designate a person to coordinate COVID-19 workplace safety efforts at covered workplaces. Because covered contractor employees are already covered by the protections in those guidelines, OSHA has determined that complying with this standard in addition to the federal contractor guidelines is not necessary to protect covered contractor employees from a grave danger posed by COVID-19.

Although there may be some respects in which the OSHA standard is somewhat more protective, such as providing paid leave for vaccination, the federal contractor guidelines are somewhat more protective in other respects, such as requiring vaccination for everyone who does not have a right to an accommodation rather than allowing employees to submit to testing in lieu of vaccination.

In essence, they are similar but slightly different schemes that provide roughly equivalent protection, and OSHA has determined that imposing a second set of similar protections on covered federal

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

contractors by subjecting them to this ETS in addition to the federal contractor guidance is unnecessary at this time to reduce a grave danger to covered contractor employees from COVID-19.

Regulatory Requirements

- Employer Policy on Vaccinations, and Information Provided to Employees

The ETS specifies that employers must establish and implement a written mandatory vaccination policy ([OSHA Mandatory Vaccination Policy Template](#)). The employer is exempted from this requirement only if the employer establishes and implements a written policy allowing any employee not subject to a mandatory vaccination policy to either choose to be fully vaccinated against COVID-19 or to provide proof of testing for COVID-19 once every seven (7) days and to wear a face covering while in the workplace ([OSHA COVID-19 Vaccination, Testing and Face Covering Policy Template](#)). The ETS also requires the employer to inform each employee, in a language and at a literacy level the employee understand about:

- The requirements of the ETS as well as any employer policies and procedures established to implement the ETS;
- COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated;
- The requirements of 29 CFR 1904.35(b)(1)(iv) and Section 11(c) of the OSH Act; and
- The prohibitions of 18 U.S.C. 1001 and Section 17(g) of the OSH Act.

Under the ETS, the employer, with certain exceptions specified in the ETS, 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.

The ETS does not require, nor does it prohibit, the employer to pay for any costs associated with face coverings (although employer payment for face coverings may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements). However, the employer must permit the employee to wear a respirator instead of a face covering whether required or not. In addition, the employer may provide respirators or face coverings to the employee, even if not required. In such circumstances, where the employer provides respirators, the employer must also comply with the OSHA mini-respiratory protection program (§ 1910.504).

NOTE: A mandatory vaccination policy is an employer policy requiring each employee to be fully vaccinated. Such a policy must require vaccination of all employees, other than those employees who fall into one of three categories:

- Those who cannot receive a vaccine due to a medical condition,
- Those for whom medical necessity requires a delay in vaccination, or
- Those who are legally entitled to a reasonable accommodation under federal civil rights laws because they have a disability or sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement. The policy must also require all new employees to be vaccinated as soon as practicable.

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

- Determining Employee Vaccination Status

Employers who fall under the scope of the ETS must determine the vaccination status of each employee. This determination must include whether the employee is fully vaccinated, which is two weeks after the full required vaccine course is completed. The employer must require each vaccinated employee to provide acceptable proof of vaccination status, including whether they are fully or partially vaccinated. Acceptable proof of vaccination status is:

- The record of immunization from a health care provider or pharmacy;
- A copy of the COVID-19 Vaccination Record Card;
- A copy of medical records documenting the vaccination;
- A copy of immunization records from a public health, state, or tribal immunization information system; or
- A copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).

In instances where an employee is unable to produce acceptable proof of vaccination, per above, a signed and dated statement by the employee, **subject to criminal penalties for knowingly providing false information:**

- Attesting to their vaccination status (fully vaccinated or partially vaccinated); and
- Attesting that they have lost and are otherwise unable to produce proof required by the ETS.

The employee's statement must:

- Attest to their vaccination status (fully vaccinated or partially vaccinated);
- Attest that they have lost or are otherwise unable to produce proof required by the standard; and
- Include the following language: "I declare (or certify, verify, or state) that this statement about my vaccination status is true and accurate. I understand that knowingly providing false information regarding my vaccination status on this form may subject me to criminal penalties."

Employees who attest to their vaccination status should, to the best of their recollection, include the following information in their attestation:

- The type of vaccine administered;
- Date(s) of administration; and
- The name of the health care professional(s) or clinic site(s) administering the vaccine(s).

Any employee who does not provide one of the acceptable forms of proof of vaccination status must be treated as not fully vaccinated for the purpose of the ETS.

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

Employers must maintain a record of each employee’s vaccination status and must preserve acceptable proof of vaccination for each employee who is fully or partially vaccinated. Employers must also maintain a roster of each employee’s vaccination status. These records and roster are considered to be employee medical records and must be maintained as such records in accordance with 29 CFR 1910.1020 and must not be disclosed except as required or authorized by the ETS or other federal law. These records and roster are not subject to the retention requirements of 29 CFR 1910.1020(d)(1)(i) but must be maintained and preserved while the ETS remains in effect.

Finally, when an employer has ascertained employee vaccination status prior to the effective date of this section through another form of attestation or proof, and retained records of that ascertainment, the employer is exempt from the **determining the vaccination status of employee** requirements of the ETS only for each employee whose fully vaccinated status has been documented prior to the effective date of this section. An employer’s records of ascertainment of vaccination status for each such person constitute acceptable proof of vaccination.

OSHA will exercise enforcement discretion where employers have made a good faith effort to implement a mandatory vaccination policy and have reached fully vaccinated status for the vast majority of covered employees.

When determining employers’ good faith efforts to vaccinate their entire workforce, OSHA will consider the extent of the work force that is fully vaccinated and the steps the employer has taken to protect unvaccinated workers. For example, discretion would be appropriate at:

- worksites where almost all workers are vaccinated (e.g., approximately 95%) and the remaining unvaccinated workers have limited to no contact with others;
- worksites with only a small portion of unvaccinated workers, when those who are unvaccinated have had the first dose and are scheduled to receive the final requisite dose; or
- establishments with high employee turnover rates, and where consistent efforts are made to ensure that new employees are promptly incorporated into the employer’s vaccination policy.

- Employer Support for Employee Vaccination

The employer must support COVID-19 vaccination by providing:

- Time for vaccination. The employer must:
 - Provide a reasonable amount of time to each employee for each of their primary vaccination series dose(s); and
 - Provide up to 4 hours paid time, including travel time, at the employee’s regular rate of pay for this purpose.
- Time for recovery. The employer must provide “reasonable” time and paid sick leave to recover from side effects experienced following any vaccination

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

series dose to each employee for each dose. Employers may require employees to use paid sick leave benefits otherwise provided by the employer to offset these costs, if available.

NOTE: The ETS does not specify what constitutes a “reasonable” time to recover from side effects following and vaccination series dose, but OSHA notes in the preamble to the ETS that the average length of absence for recovery is about two days.

Under the ETS, fully vaccinated means:

- A person’s status 2 weeks after completing primary vaccination with a COVID-19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the approval, authorization, or listing that is: (A) approved or authorized for emergency use by the FDA; (B) listed for emergency use by the World Health Organization (WHO); or (C) administered as part of a clinical trial at a U.S. site, if the recipient is documented to have primary vaccination with the “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), or if the clinical trial participant from the U.S. site had received a COVID-19 vaccine that is neither approved nor authorized for use by FDA but is listed for emergency use by WHO;
- A person’s status 2 weeks after receiving the second dose of any combination of two doses of a COVID-19 vaccine that is approved or authorized by the FDA or listed as a two-dose series by the WHO (i.e., heterologous primary series of such vaccines, receiving doses of different COVID-19 vaccines as part of one primary series). The second dose of the series must not be received earlier than 17 days (21 days with a 4-day grace period) after the first dose.
- Booster shots and additional doses are not included in the definition of fully vaccinated under the ETS. Therefore, an employer is not required to obtain vaccination-related information beyond what is considered necessary to demonstrate that the employee is fully vaccinated as defined by the ETS.

NOTE: If an employee chooses to receive the vaccine outside of work hours, OSHA does not require employers to grant paid time to the employee for the time spent receiving the vaccine during non-work hours (although other laws may include additional requirements for employers, such as those addressing reasonable accommodations or exemptions).

- COVID-19 Testing for Employees who are Not Fully Vaccinated.

The ETS requires the employer to ensure that each employee who is not fully vaccinated do the following:

- An employee 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

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

- 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 where other individuals, such as coworkers or customers, are present (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; and
 - Must provide documentation of that test result to the employer upon return to the workplace.

If an employee does not provide documentation of a COVID-19 test result as required by the ETS, the employer must keep that employee removed from the workplace until they provide a test result. In addition, when an employee has received a positive COVID-19 test or has been diagnosed with COVID-19 by a licensed healthcare provider, the employer must not require that employee to undergo COVID-19 testing for 90 days following the date of their positive test or diagnosis.

Finally, the employer must maintain a record of each test result provided by each employee or obtained during tests conducted by the employer. These records are considered to be employee medical records and must be maintained as such records in accordance with 29 CFR 1910.1020 and must not be disclosed except as required or authorized by this section or other federal law. These records are not subject to the retention requirements of 29 CFR 1910.1020(d)(1)(i) but must be maintained and preserved while this section remains in effect.

Employees who are **partially vaccinated** are also required to be tested once every seven (7) days until they are fully vaccinated. Those receiving the J&J vaccine will require two weeks of testing after the single shot, employees who received the Pfizer-BioNTech Vaccine will require five (5) weeks of testing (three (3) weeks between shots and two (2) weeks following the second shot), and Moderna recipients require six (6) weeks of testing four (4) weeks between shots and two (2) weeks following the second shot).

The ETS does not require the employer to pay for any costs associated with testing (cost of test or time required to get tested); however, employer **payment for testing may be required by other laws, regulations, or collective bargaining agreements**. The ETS does not require the employer to provide paid time off to any employee for removal as a result of the employee's refusal/failure to provide documentation of a COVID-19 test result as required by the ETS.

According to OSHA, the use of antigen testing should not result in an inability to provide the employer with test results in a timely fashion. However, the agency recognizes that where the employee or employer uses an off-site laboratory for testing, there may be delays beyond the employee's or employer's control. In the event that there is a delay in the laboratory reporting results and the employer permits the employee to continue working, OSHA will look at the pattern and practice of the individual employee or the employer's testing verification process

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

and consider refraining from enforcement where the facts show good faith in attempting to comply with the standard.

Acceptable tests: A “COVID-19 test” means a test for SARS-CoV-2 that is: (1) cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the U.S. Food and Drug Administration (FDA) to detect current infection with the SARS-CoV-2 virus (e.g., a viral test); (2) administered in accordance with the authorized instructions; and (3) not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor. Examples of tests that satisfy this requirement include tests with specimens that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by an employer.

- Employee notification to employer of a positive COVID-19 test and removal.

Regardless of COVID-19 vaccination status or any COVID-19 testing required by the ETS, the 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.

The ETS does not require employers to provide paid time off to any employee for removal from the workplace as a result of a positive COVID-19 test or diagnosis of COVID-19; however, paid time off may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.

- 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 employer can show that the use of face coverings is infeasible or creates a greater hazard that would excuse compliance with this paragraph (e.g., when it is

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

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).

The employer must ensure that any face covering required to be worn by this section:

- Is worn by the employee to fully cover the employee's nose and mouth; and
- Is replaced when wet, soiled, or damaged (e.g., is ripped, has holes, or has broken ear loops).

The employer must not prevent any employee from voluntarily wearing a face covering or facemask unless the employer can demonstrate that doing so would create a hazard of serious injury or death, such as interfering with the safe operation of equipment.

The employer must permit the employee to wear a respirator instead of a face covering whether required or not. In addition, the employer may provide respirators to the employee, even if not required. In such circumstances, the employer must also comply with the OSHA mini-respiratory protection standard (§ 1910.504).

The employer must not prohibit customers or visitors from wearing face coverings. The ETS does not require the employer to pay for any costs associated with face coverings; however, employer payment for face coverings may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.

- Information provided to employees.

The employer must inform each employee, in a language and at a literacy level the employee understands, about:

- The requirements of this section as well as any employer policies and procedures established to implement this section;
- COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated, by providing the document, "Key Things to Know About COVID-19 Vaccines," available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>;
- The requirements of 29 CFR 1904.35(b)(1)(iv), which prohibits the employer from discharging or in any manner discriminating against an employee for reporting a work-related injuries or illness, and section 11(c) of the OSH Act, which prohibits the employer from discriminating against an employee for exercising rights under, or as a result of actions that are required by, this section. Section 11(c) also protects the employee from retaliation for filing an occupational safety or health complaint, reporting a work-related injuries or illness, or otherwise exercising any rights afforded by the OSH Act; and
- The prohibitions of 18 U.S.C. 1001 and of section 17(g) of the OSH Act, which provide for criminal penalties associated with knowingly supplying false statements or documentation.

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

- Reporting COVID-19 fatalities and hospitalizations to OSHA.

The employer must report to OSHA:

- Each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality.
- Each work-related COVID-19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization.

When reporting COVID-19 fatalities and in-patient hospitalizations to OSHA in accordance with the ETS, the employer must follow the requirements in 29 CFR part 1904.39, except for 29 CFR part 1904.39(a)(1) and (2) and (b)(6).

- Recording Adverse Reactions to COVID-19 Vaccination on the OSHA 300 Log

According to an OSHA [FAQ](#) specifically related to recordability of adverse reactions to COVID-19 vaccinations, OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, or disincentivizing employers' vaccination efforts. As a result, OSHA will not enforce their recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. OSHA will reevaluate this position at that time to determine the best course of action moving forward.

- Availability of records

By the end of the next business day after a request, the employer must make available, for examination and copying, the individual COVID-19 vaccine documentation and any COVID-19 test results for a particular employee to that employee and to anyone having written authorized consent of that employee.

By the end of the next business day after a request by an employee or an employee representative, the employer must make available to the requester the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

The employer must provide to the Assistant Secretary for examination and copying:

- Within 4 business hours of a request, the employer's written policy, and the aggregate numbers fully vaccinated employees at a workplace and the total number of employees; and
- By the end of the next business day after a request, all other records and other documents required to be maintained by the ETS.

OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard: Summary and Explanation



January 14, 2022

Additional Resources

AGC of America

- [COVID-19 Vaccine Toolkit](#)
- [Strategies to Improve Workplace Vaccination Rates and Preparing for Various Mandates](#)
- [Sticking Points: What Construction Employers Need to Know About COVID-19 Vaccines and Flu Shots](#)
- [Vaccination Q&As for Construction Employers](#)
- [Understanding the Federal Contractor COVID-19 Vaccination Mandate](#)
- [Safer Federal Workforce Task Force Website](#)
- [Federal Acquisition Regulation Council and the Safer Federal Workforce Task Force](#)
- [Letter to the U.S. Department of Labor and OSHA](#)

OSHA

- [Vaccination and Testing ETS Landing Page](#)
- [Full Vaccination and Testing ETS Text](#)
- [Vaccination and Testing ETS Fact Sheet](#)
- [Vaccination and Testing ETS FAQs](#)

EEOC

- [Updated COVID-19 Technical Assistance](#)
- [General guidance “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws”](#)
- [Accommodations - https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D)
- [Vaccinations – Title VII and Religious Objections to COVID-19 Vaccine Mandates - https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L)
- [EEOC Internal Religious Accommodation Request Form -](#)