


VACCINE MANDATES


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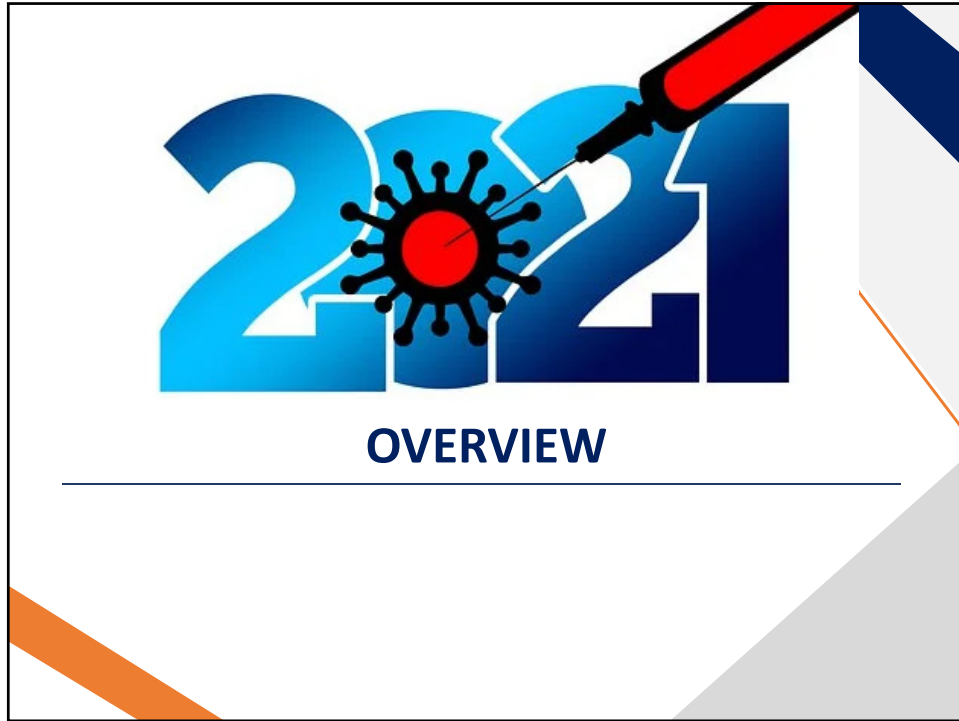
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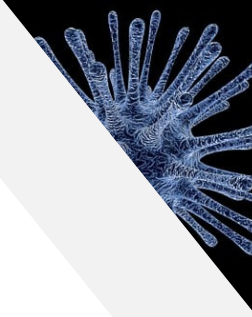
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CURRENT MANDATES

FEDERAL

- Federal Contractor and Sub Contractor Mandate
- 100 or More Employee Mandate
- CMS Mandate
- Federal Employees



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CURRENT MANDATES

NEW YORK/PA

- New York State Healthcare Workers—Upheld by Second Circuit
- School Employees
- Healthcare workers OPWDD/Mental Health
- PA Healthcare Workers in facilities and congregate care settings

<https://www.littler.com/publication-press/publication/mandatory-employee-vaccines-coming-state-near-you>

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OSHA-Emergency Temporary Standard

BASICS

- In effect immediately
- Policy, compliance 30 days (i.e. Dec. 5)
- Testing for unvaccinated 60 days (i.e. Jan. 4)
- Applies to Employers with 100 or more employees

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DOES NOT APPLY TO . . .

- Employees under another standard
- Employees who do not report to a workplace
- Employees who work exclusively outside



HOW DO WE COUNT 100?

- All employees in the U.S., even work from home
- Employer level—firm or corporate wide, not location
- Part-time employees count
- Staffing Agency counts their employees, not the host
- Determined as of Nov. 5, 2021 or when you get to 100

COUNTING TO 100—RELATED ENTITIES?

- “two or more related entities may be regarded as a single employer for OSH Act purposes if they handle safety matters as one company”
- Reference to OSH Act Generally
- Once an employer has come within the scope of the ETS, the standard applies for the remainder of the time the standard is in effect



DEVELOP A POLICY

WHAT KIND OF POLICY?

- Mandatory Vaccination Policy
 - Only exceptions are medical or religious
- Vaccination or Testing/Face Covering Policy
- Can Have a Mixed Vaccination Policy

WHAT IS IN THE POLICY?

- Requirement for vaccination
- Exclusions
- Paid time and sick leave for vaccinations
- Notification of positive COVID-19 test and removal of COVID-19 positive employees from the workplace

WHAT ELSE IS IN THE POLICY?

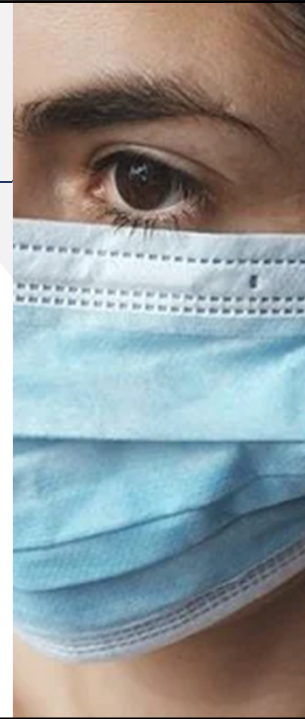
- Information sharing
- Discipline for non-compliance
- Effective date, who policy applies to and deadlines

WHAT ABOUT UNVACCINATED EMPLOYEES?

- Procedures applicable to unvaccinated employees
- Testing procedures
 - Testing temporarily suspended for 90 days following positive COVID-19 test
- Mandatory Face Coverings

NEW EMPLOYEES

- Must Be Treated as an employee who hasn't been in the workplace for 7 days—vaccinated or test



DETERMINE VACCINE STATUS OF EMPLOYEES

WHAT CAN YOU RELY ON?

- Record of Immunization
- Copy of the COVID-19 Vaccination Record Card
- Copy of Medical Record
- Copy of Public Health Immunization Record
- Other official document (i.e. Excelsior Pass)
- Employee Statement—must comply with rules



Maintain Records of Vaccination

- Copy of Proof
- Roster—all employees and their status (vaccinated and dates, partial and dates, not vaccinated. If accommodation, what accommodation)
- Employee Medical Records—OSHA confidentiality standard applies
- Records preserved while ETS in effect (not 30 yrs.)

WHAT ABOUT FRAUD?

- Employers should take precautions but are not responsible for a lying employee
- OSHA will pursue its remedies including criminal penalties—do not collude



EMPLOYER SUPPORT FOR VACCINATION

- Up to 4 hours of paid time to receive each dose
- Reasonable time and paid sick leave to recover from side effects
 - Can be from employee's sick leave, but must be provided even if employee doesn't have paid sick leave



TESTING

OPTION TO ALLOW TESTING

- Once every 7 days, even if not reporting to work
- Must wear face covering at work
- If out for extended period, must test within 7 day period before return to workplace



TESTING POLICY

- Must specify how testing occurs
- How test results provided
 - If from a lab must contain approved information
- OSHA may consider good faith if it's a one time late test
- Temporary suspension of testing (90 days) for positive test

WHO PAYS?

- Employee pays for testing unless Employer chooses otherwise
 - Be careful of employee dipping below minimum wage
 - Be careful about payment for time to get tested



WHAT KIND OF TESTS?

- Cleared, approved or authorized (including EUA)
- Administered in accordance with directions
- Not both self-administered and self-read unless observed by employer or telehealth proctor
- Observed by employers without laboratory processing
- *Not* antibody tests
- *NAATs and antigen tests are both ok*



POLICY FOR POSITIVE TESTS

REMOVAL FROM THE WORKPLACE

- Require employees to notify employer of positive COVID result
 - Regardless of vaccine status
- Establish notification procedures
- Employee must be removed from workplace
 - Remote Work
 - Creative Solutions
 - Sick Leave (NY COVID leave)

WHEN CAN EMPLOYEE RETURN?

- Negative result on COVID-19 NAAT
- Meet the CDC Guidelines:
 - 10 days since first symptoms
 - 24 hours without symptoms and no fever reducer
 - Symptoms improving (except loss of taste and smell)
- Healthcare Provider recommends return



**INFORMATION PROVIDED TO
EMPLOYEE**
