**8 Key Details You Need to Know About OSHA’s Vaccination and Testing Standard**

OSHA's recently announced Emergency Temporary Standard (ETS) on vaccination and testing was issued on November 5, 2021, and within days it was stayed by 5th U.S. Circuit Court of Appeals. While the legality of the standard, aka 29 CFR 1910.501, remains in question, it would still be a good idea for your business to become familiar with the standard's requirements, in the event it is allowed to continue.

Here are 8 key details of the standard you need to know:

**1. 100 Employees Requirement**

The ETS applies to companies with 100 or more employees. This counts 100 employees at the enterprise level, but only U.S. employees. The number is based on heads, not equivalent hours. The host employer does NOT count temporary worker hours (this goes on staffing agencies’ head counts).  Determining head count starts at worker start dates of November 5, 2021 and later. If you reach 100 employees at any one time, your company will fall under the requirements throughout the life of the ETS (which is supposed to end on May 4, 2022).

**2. Determining Vaccination Status**

Employers must determine the vaccination status of every employee. Employers must also maintain current knowledge of the aggregate number of fully vaccinated employees and total number of employees at the workplace. If requested by OSHA or an employee, this information must be made available within 4 hours.

**3. Testing**

If you decide not to require vaccines for all employees, the standard allows unvaccinated employees to do weekly testing. Employers are not responsible for the costs of testing.

There is a hard 7-day limit in testing. That is, the employer must have a copy of a new COVID test result on 7th day. The employee cannot come to work on the 8th day without a test result.

Pool testing for weekly testing will be allowed. This means you can collect the same type of specimen from several people and conduct one antigen laboratory test on the combined pool of specimens (e.g., four samples may be tested together, using only the resources needed for a single test). If pooling procedures are used and a pooled test result comes back negative, then all the specimens can be presumed negative with the single test. If results come back positive, additional testing per employee to determine which one in the pool is the positive one would be required. Pool testing would reduce testing costs and results time.

**4. Rules for the Unvaccinated**

There is no more 6-foot distance rule when it comes to masking. All unvaccinated workers would be required to wear masks. They could only remove masks when they are alone in a closed room with the doors closed, when eating/drinking, when wearing a respirator, for identification purposes (security ID), when their job duties require seeing their mouth or when a face covering would present a serious injury or death. Unvaccinated workers who become close contacts would no longer have to be removed from the workplace.

**5. Written Policy**

Employers must have written policy in place that covers either mandatory vaccinations or a vaccination/testing option.

**6. Training/Informing Workers About the ETS**

Employers need to provide certain information to employees about the ETS and any method of information is acceptable as long as it includes the following information:

* Information about the ETS
* Employer policies/procedures
* Vaccine information by providing the specific document “Key Things to Know About COVID-19 Vaccines”
* Multiple sections of the OSH Act which protects against discrimination, reporting injuries/illnesses, retaliation, and about criminal penalties associated with knowingly supplying false information.

**7. Recordkeeping**

Vaccine and weekly testing records will be considered medical records which need to be maintained in a confidential manner. However, unlike other OSHA medical record requirements, vaccine and weekly testing records would only need to be maintained for the life of ETS.

**8. Compliance Date**

At the moment, the compliance date is December 6, 2021 for all provisions except weekly testing. The compliance date for weekly COVID testing is January 4, 2022.

###

iSi will be monitoring developments with federal OSHA ETS and will update this article, or provide additional information in our blog as information continues to develop.