

OSHA COVID-19 Vaccine Mandate: Interactive decision tree for employers

IS MY COMPANY COVERED UNDER THE NEW OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION'S (OSHA) VACCINE MANDATE?

I have 100 or more employees.

YOU ARE COVERED — CLICK HERE FOR STEP ONE.

I have 100 or more employees, but my employees are in a state that has passed legislation protecting the rights of unvaccinated individuals.

YOU ARE COVERED — CLICK HERE FOR STEP ONE.

I don't have 100 employees unless you count part-time workers, minors, temporary workers or seasonal employees.

THEY ALL COUNT. YOU ARE COVERED — CLICK HERE FOR STEP ONE.

I don't have 100 employees, but I plan on hiring a few more employees that will put me over 100 at some point over the next six months.

YOU ARE COVERED — CLICK HERE FOR STEP ONE.

I don't have 100 employees, nor will I in the foreseeable future.

YOU ARE NOT COVERED.

For further information on how employees should be counted, see OSHA FAQ 2A — <https://www.osha.gov/coronavirus/ets2/faqs>

STEP ONE | ESTABLISH POLICY AND CONVEY INFO TO EMPLOYEES

([More information available at osha.gov.](#))

Employers must establish, implement and enforce a written vaccination policy. (Sample policy [here.](#)) Under the policy, employees must either be fully vaccinated against COVID-19 or provide proof of regular testing for COVID-19 and wear a mask. ([More information available at osha.gov.](#))

Employers must inform each employee about:

- The requirements of the ETS
- Any employer policies and procedures established pursuant to the ETS.
- The efficacy, safety and the benefits of the COVID-19 vaccine, specifically a copy of this document: "[Key Things to Know About COVID-19 Vaccines.](#)"
- The fact that employers are prohibited from discriminating against an employee for reporting a work-related injury or illness and from discriminating against an employee for exercising rights under the ETS or the OSH Act.
- The existence of criminal penalties for knowingly supplying false statements or documentation.

► **GO TO STEP TWO: BUILD A ROSTER.**

STEP TWO | BUILD A ROSTER AT EACH LOCATION

The roster must list all employees and clearly indicate for each one whether they are fully vaccinated, partially (not fully) vaccinated, not fully vaccinated because of a medical or religious accommodation, or not fully vaccinated because they have not provided acceptable proof of their vaccination status. Although unvaccinated employees will not have proof of vaccination status, the standard requires the employer to include all employees, regardless of vaccination status, on the roster. If requested by an employee or an employee representative, employers 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 by the end of the next business day after a request. ([More information available at osha.gov.](#))

SAMPLE RESOURCES: [Sample Employee Roster](#)

► **GO TO STEP THREE: ASSESSMENT.**

STEP THREE | ASSESSMENT

Assess your workforce. Everyone, including seasonal, temporary and part-time workers, must be assessed.

IS THE EMPLOYEE VACCINATED?

- ▶ **YES**
 - ▶ **NO**
 - ▶ **EMPLOYEE REFUSES TO ANSWER**
-

STEP THREE | YES, THE EMPLOYEE IS VACCINATED

YES, AND EMPLOYEE HAS VACCINE CARD

Please upload/email a scan of your vaccination card, record of immunization from a health care provider or pharmacy, medical record documenting the vaccination, proof from a public health system or other “official documentation.”

([More information available at osha.gov.](https://www.osha.gov))

► **GO TO STEP FIVE: TESTING RESPONSE AND RECORDING.**

YES, BUT EMPLOYEE DOESN'T HAVE CARD

Ask employee to secure alternate forms of documentation via other means (e.g., from the vaccine administrator or their state health department). ([More information available at osha.gov.](https://www.osha.gov))

If the employee cannot find a copy of their vaccine card, obtain a signed and dated statement by the employee. 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.”

An employee who attests 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).

SAMPLE RESOURCES: [No Vax Card Self-Attestation Form](#)

► **GO TO STEP FIVE: TESTING RESPONSE AND RECORDING.**

STEP THREE | NO, THE EMPLOYEE IS NOT VACCINATED

NO, EMPLOYEE IS UNVACCINATED, BUT WILLING TO GET THE SHOT

Employee is now entitled to four hours of paid leave per shot, or eight hours total. Employers cannot force employees to use accrued time or vacation leave.

These workers must then start the process of vaccination to avoid weekly testing. Workers need to have received both shots by January 4, 2022. Thus, they must start the Moderna regiment by December 7 or the Pfizer regiment by December 14.

Employers must provide paid sick leave for a “reasonable time” to employees to recover from side effects but can insist this leave come from accrued time off.

Worker must be masked until fully vaccinated. ([More information available at osha.gov.](https://www.osha.gov))

► **GO TO STEP FIVE: TESTING RESPONSE AND RECORDING.**

NO, EMPLOYEE IS UNVACCINATED BUT DOES NOT WANT THE SHOT

Worker must be masked until fully vaccinated. Mask must always cover the nose and mouth while working indoors. Masking required when occupying a vehicle with another person for work. No masking required while the employee is eating or drinking. No masking required if it “creates a greater hazard.” Beginning January 4, employee will need to produce a negative test to come to the workplace.

► **GO TO STEP FOUR: WEEKLY TESTING.**

NO, EMPLOYEE IS UNVACCINATED, UNWILLING TO GET THE SHOT AND SAYS THEY HAVE NATURAL IMMUNITY

The ETS does include any exemption for “natural immunity.” Worker is considered unvaccinated and must be masked until fully vaccinated. ([More information available at osha.gov.](https://www.osha.gov))

► **GO TO STEP FOUR: WEEKLY TESTING.**

NO, EMPLOYEE IS UNVACCINATED AND ALLERGIC TO THE VACCINE

Worker is considered unvaccinated and must be masked. Mask must always cover the nose and mouth while working indoors. Masking required when occupying a vehicle with another person for work. No masking required while the employee is eating or drinking. No masking required if it “creates a greater hazard.” Beginning January 4, employee will need to produce a negative test to come to the workplace.

► **GO TO STEP FOUR: WEEKLY TESTING.**

NO, EMPLOYEE IS UNVACCINATED AND CLAIMS A RELIGIOUS EXEMPTION

Worker is considered unvaccinated and must be masked. Mask must always cover the nose and mouth while working indoors. Masking required when occupying a vehicle with another person for work. No masking required while the employee is eating or drinking. No masking required if it “creates a greater hazard.” Beginning January 4, employee will need to produce a negative test to come to the workplace.

SAMPLE RESOURCES: [Religious Exemption Request Form](#)

► **GO TO STEP FOUR: WEEKLY TESTING.**

STEP THREE | EMPLOYEE REFUSES TO ANSWER

Worker is considered unvaccinated and must be masked until fully vaccinated. Beginning January 4, employee will need to produce a negative test to come to the workplace.

▶ GO TO STEP FOUR: WEEKLY TESTING.

STEP FOUR | WEEKLY TESTING OF UNVACCINATED EMPLOYEES

By January 4, employers must allow unvaccinated workers into the workplace if and only if they produced a negative test with the past seven days and are masked.

Any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed health care provider must be removed from the workplace.

Employers may pass on the costs of the weekly testing to unvaccinated employees. However, the administration states that “employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.”

As for kinds of test, simple home rapid antigen test kits are acceptable, but the test **cannot** be both self-administered and self-read by the employee. The test must be done in “the presence of the employer or a health care or telehealth test proctor.”

► **GO TO STEP FIVE: TESTING RESPONSE AND RECORDING.**

STEP FIVE | TESTING RESPONSE AND RECORDING

Employers must immediately remove from the workplace any employee, regardless of vaccination status, who tests positive for COVID-19. The employee must be removed from the workplace until the employee:

receives a negative test on a COVID-19 nucleic acid amplification test following a positive result on a COVID-19 antigen test;

receives a recommendation to return to work from a licensed health care professional; or

waits 10 days since symptoms first appeared, goes 24 hours with no fever without the use of fever-reducing medications, and experiences an improvement in symptoms of COVID-19.

Employers must make “reasonable efforts” to determine whether the employee’s exposure to COVID-19 was “work-related.” Employers should consider factors such as:

the type, extent and duration of contact the employee had at the work environment with other people, particularly the public;

physical distancing and other controls that impact the likelihood of work-related exposure;

the extent and duration of time spent in an indoor work space with limited ventilation; and

whether the employee had work-related contact with anyone who exhibited signs and symptoms of COVID-19.

Employers must treat the records and roster required by the ETS as employee medical records. These records must be maintained in a confidential manner and not be disclosed except as required or authorized by the ETS or other federal law, including the Americans with Disabilities Act.

Employers must make available, for examination and copying, the individual COVID-19 vaccine documentation for a particular employee to that employee and to anyone having written authorized consent of that employee. ([More information available at osha.gov.](#))

SAMPLE RESOURCES: [Inquiry Form for Employees Testing Positive for COVID-19](#)

For any additional questions, please contact Edwin Egee at egeee@nrf.com.
