

# OSHA's New Vaccine Mandate and Testing Policy

Presented by:

**Michael Neary, Julie Reddig, & Nicole Behrman**

*Employment Attorneys*

Lerch, Early & Brewer

## I. Introduction

OSHA ETS:

- Coverage – Employer & Employee
- Requirements –
  - Documentation, Reporting, and Record Keeping
  - Leave
  - Masking
  - Testing
  - Accommodations
- Impact of State and Local Laws & Litigation Challenging the ETS

## II. Coverage

### Which employers are covered?

- Employers with 100 or more employees
  - 100 employees at any time while ETS is in effect
  - 100 employees across all U.S. locations
  - 100 full and part time employees
  - Two or more related entities that handle safety matters as one company

### Exclusions:

- Workplaces subject to the Safer Federal Task Force COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors.
- Workplaces where any employee provides healthcare services or healthcare support services when subject to the requirements of the Healthcare ETS

## II. Coverage

### Which employees are exempt from coverage?

- Workers who do not report to a workplace where other individuals are present
- Workers who telework from home
- Workers who perform their work exclusively outdoors.

## III. Requirements

- a. Draft and implement a written policy requiring employees to either be fully vaccinated or submit to COVID-19 testing.
  
- b. Notify employees of:
  - The requirements of the ETS, and the written policy;
  - The CDC's document "Key Things to Know about COVID-19 Vaccines" on COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated;
  - Prohibitions on discharging, discriminating, or retaliating against an employee for reporting any work-related illnesses or violations of the ETS; and
  - Criminal penalties associated with knowingly supplying false statements or documents.

## III. Requirements

- c. Determine Vaccination Status of All Employees
- d. Require each vaccinated employee to provide proof of vaccination status.
  - Acceptable proof of vaccination status is:
    - Record of immunization from health care provider or pharmacy;
    - Copy of the COVID-19 vaccination record card;
    - 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, dates of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s)
  - Must obtain physical or digital copy of proof of vaccination
  - Attestation exception to proof of vaccination
- e. Maintain a record of each employee's vaccination status, preserve acceptable proof of vaccination for each employee, and maintain a roster of the vaccination status for each and every employee.
  - Record, roster, and vaccination cards considered medical records. Must be kept confidential.
  - Do NOT have to obtain records or information on the booster shot status of each employee.

## III. Requirements

### f. Leave

- Must provide reasonable amount of time to each employee to receive primary COVID-19 vaccine dose(s) during work hours, including up to 4 hours of paid time at the employee's regular rate of pay for *each* dose of the vaccine.
  - Paid leave cannot be offset by any other leave the employee has accrued.
  - ETS does not require employers to provide paid leave if employee chooses to receive primary vaccination dose(s) outside of work hours.
- Must provide employees reasonable time and paid sick leave to recover from side effects experienced following COVID-19 vaccination dose(s)
  - Employer CAN require employees to use accrued paid sick leave
  - Employer CANNOT require employees to use advanced sick leave/incur negative leave balance
  - How much time is "reasonable"?
    - ETS FAQ- "Generally, OSHA presumes that, if an employer makes available up to 2 days of paid sick leave, the employer would be in compliance"

- But, check state laws of COVID-19 vaccine leave.

## III. Requirements

### g. Masking for Employees Not Fully Vaccinated

- Each employee that is not fully vaccinated must wear a face covering when:
  - Indoors; and
  - Occupying a vehicle with another person for work purposes.
- Exceptions:
  - When an employee is alone in a room with floor to ceiling walls and a closed door;
  - For a limited time while an employee is eating or drinking at the workplace;
  - For identification purposes in compliance with safety and security requirements;
  - When an employee is wearing a respirator or facemask (surgical mask); and
  - When an employer can show that the use of a face coverings is infeasible or creates a greater hazard.
- ETS does not require employers to pay for costs of face coverings. But, employers may be required to by other laws, regulations, or CBAs.
- BUT, there might be state requirements that require fully vaccinated employees to wear masks in areas of substantial or high transmission.

## III. Requirements

### h. Reporting Requirements

- Employers must report to OSHA
  - Each work-related COVID-19 fatality within 8 hours of learning of fatality.
  - Each work-related COVID-19 inpatient hospitalization within 24 hours of learning about the hospitalization
    - Inpatient hospitalization- formal admission to the in-patient service of a hospital or clinic for care or treatment.

## III. Requirements

### i. Testing and Notification/Removal for Positive Tests

- Unvaccinated employees reporting to a covered employer's workplace must take and provide proof of a negative test at least once every 7 days
- Acceptable Tests – any cleared approved or authorized (including EUA) by FDA that are not both self-administered and self-read unless observed by the employer or authorized telehealth proctor
- Employees testing positive must be immediately removed from the workplace
- To return after testing positive: (i) negative NAAT; meet the CDC's return to work criteria, or recommendation from a licensed healthcare provider
- Employers must maintain all testing records while the ETS is in effect
- These are confidential medical records.

## Compliance Deadlines

Table of effective dates		
Requirement	December 6, 2021	January 4, 2022
Establish policy on vaccination (paragraph (d))	X	
Determine vaccination status of each employee, obtain acceptable proof of vaccination, maintain records and roster of vaccination status (paragraph (e))	X	
Provide support for employee vaccination (paragraph (f))	X	
Require employees to promptly provide notice of positive COVID-19 test or COVID-19 diagnosis (paragraph (h))	X	
Remove any employee who received positive COVID-19 test or COVID-19 diagnosis (paragraph (h))	X	
Ensure employees who are not fully vaccinated wear face coverings when indoors or when occupying a vehicle with another person for work purposes (paragraph (i))	X	
Provide each employee information about the ETS; workplace policies and procedures; vaccination efficacy, safety and benefits; protections against retaliation and discrimination; and laws that provide for criminal penalties for knowingly supplying false documentation (paragraph (j))	X	
Report work-related COVID-19 fatalities to OSHA within 8 hours and work-related COVID-19 in-patient hospitalizations within 24 hours (paragraph (k))	X	
Make certain records available (paragraph (l))	X	
Ensure employees who are not fully vaccinated are tested for COVID-19 at least weekly (if in the workplace at least once a week) or within 7 days before returning to work (if away from the workplace for a week or longer) (paragraph (g))		X

# Thank you!

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## About the Presenter



### **Nicole M. Behrman**

*Employment & Labor Attorney*  
Lerch, Early & Brewer

T 301-657-0744

F 301-347-1763

[nmbehrman@lerchearly.com](mailto:nmbehrman@lerchearly.com)

**Nicole Behrman** has represented clients before the DC Superior Court, District Court for the District of Columbia, the EEOC, DC Office of Human Rights, and DC Office of Administrative Hearings. She has litigated cases involving claims of discrimination, harassment, retaliation, FMLA interference and retaliation, wage and hour violations, breach of contract, and wrongful termination in violation of public policy.

## About the Presenter



### **Julie A. Reddig**

*Employment & Labor Attorney*  
Lerch, Early & Brewer

T 301-961-6099

F 301-347-1788

[jareddig@lercheearly.com](mailto:jareddig@lercheearly.com)

Employment attorney **Julie Reddig** helps employers build and maintain productive workplaces by navigating the many federal, state, and local laws protecting employees in the workforce. She counsels management on avoiding and defending against employment claims before administrative agencies and local, state, and federal courts in Maryland and the District of Columbia.

## About the Presenter



### **Michael J. Neary**

*Employment & Labor Attorney*  
Lerch, Early & Brewer

T 301-657-0740

F 301-347-1790

[mjneary@lercheearly.com](mailto:mjneary@lercheearly.com)

**Michael Neary** is an employment attorney and commercial litigator who works with businesses to prevent and defend against employee claims. He also litigates commercial disputes such as real estate controversies, business fraud, corporate and partnership dissolutions, and commercial contract claims.