



COVID-19 Emergency Temporary Standard 1910.501

# Vaccination, Testing, and Face Coverings





## HSI strives to help Safety and HR Professionals understand new mandates...

...as well as understand what, regardless of mandates, are the best practices to make your workplace safe. As such, we have put together this document which contains the text of the [OSHA COVID-19 Emergency Temporary Standard](#) published on Nov 5, 2021, in a format that is easier to digest.

Additionally, HSI created an [organizational assessment tool](#) specific to this ETS that is a companion piece to the standard. The assessment tool assists organizations to evaluate current policies and practices that create a COVID safe workplace for employees and customers.

### Organizations may want or need to have policies regarding COVID vaccines, testing, and masking in order to address a variety of needs, in addition to the OSHA ETS, such as:

- State and other local government regulations similar to the OSHA ETS that have been in place or may currently be under review to be updated.
- Local (state, county, municipal) health department regulations regarding reporting vaccination rates and/or virus cases.
- Corporate policies/mandates (many large corporations have mandates regarding vaccines, testing and mask wearing, for example, Tyson Foods, Walt Disney Corporation, Microsoft, Amtrak, Hewlett-Packard, to name a few.)
- Requirements from other companies your organization does business with (i.e. COVID safety mandates that apply to contractors and vendors, that your employees may fall under.)
- Competition to be an employer of choice, providing a safe place to work.
- Collective bargaining agreements that include elements of the OSHA ETS regarding making the workplace safe for employees.

## 1910.501(a) Purpose.

This section is intended to establish minimum vaccination, vaccination verification, face covering, and testing requirements to address the grave danger of COVID-19 in the workplace, and to preempt inconsistent state and local requirements relating to these issues, including requirements that ban or limit employers' authority to require vaccination, face covering, or testing, regardless of the number of employees.

**Note 1 to paragraph (a):** This section establishes minimum requirements that employers must implement. Nothing in this section prevents employers from agreeing with workers and their representatives to additional measures not required by this section and this section does not supplant collective bargaining agreements or other collectively negotiated agreements in effect that may have negotiated terms that exceed the requirements herein. The National Labor Relations Act of 1935 (NLRA) protects the right of most private-sector employees to take collective action to improve their wages and working conditions.

## 1910.501(b) Scope and application.

- 1) This section covers all employers with a total of 100 or more employees at any time this section is in effect.
- 2) The requirements of this section do not apply to:
  - i. Workplaces covered under the Safer Federal Workforce Task Force COVID19 Workplace Safety: Guidance for Federal Contractors and Subcontractors; or
  - ii. Settings where any employee provides healthcare services or healthcare support services when subject to the requirements of §1910.502.
- 3) The requirements of this section do not apply to the employees of covered employers:
  - i. Who do not report to a workplace where other individuals such as coworkers or customers are present;
  - ii. While working from home; or
  - iii. Who work exclusively outdoors.

## 1910.501(c) Definitions.

The following definitions apply to this section.

**Assistant Secretary** means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

**COVID-19 (Coronavirus Disease 2019)** means the disease caused by SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2). For clarity and ease of reference, this section also uses the term "COVID-19" when describing exposures or potential exposures to SARS-CoV-2.

**Face covering** means a covering that:

- i.
  - (A) completely covers the nose and mouth;
  - (B) Is made with two or more layers of a breathable fabric that is tightly woven (i.e., fabrics that do not let light pass through when held up to a light source);
  - (C) Is secured to the head with ties, ear loops, or elastic bands that go behind the head. If gaiters are worn, they should have two layers of fabric or be folded to make two layers;
  - (D) Fits snugly over the nose, mouth, and chin with no large gaps on the outside of the face; and
  - (E) Is a solid piece of material without slits, exhalation valves, visible holes, punctures, or other openings.
- ii. This definition includes clear face coverings or cloth face coverings with a clear plastic panel that, despite the non-cloth material allowing light to pass through, otherwise meet this definition and which may be used to facilitate communication with people who are deaf or hard-of-hearing or others who need to see a speaker's mouth or facial expressions to understand speech or sign language respectively.

**Facemask** means a surgical, medical procedure, dental, or isolation mask that is FDA cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy. Facemasks may also be referred to as "medical procedure masks."

**Fully vaccinated** means:

- i. 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 at U.S. sites had received a COVID-19 vaccine that is neither approved nor authorized for use by FDA but is listed for emergency use by WHO; or
- ii. 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., a 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.

**Mandatory Vaccination Policy** is an employer policy requiring each employee to be fully vaccinated. To meet this definition, the policy must require: vaccination of all employees, including vaccination of all new employees as soon as practicable, other than those employees:

- i. For whom a vaccine is medically contraindicated;
- ii. For whom medical necessity requires a delay in vaccination; or
- iii. 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.

**Respirator** means a type of personal protective equipment (PPE) that is certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR part 84 or is authorized under an EUA by the FDA. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators (e.g., N95), elastomeric respirators, and powered air purifying respirators (PAPRs). Face coverings, facemasks, and face shields are not respirators.

**Workplace** means a physical location (e.g., fixed, mobile) where the employer’s work or operations are performed. It does not include an employee’s residence.

## 1910.501(d) Employer policy on vaccination.

- 1) The employer must establish, implement, and enforce a written mandatory vaccination policy.
- 2) The employer is exempted from the requirement in paragraph (d)(1) of this section only if the employer establishes, implements, and enforces a written policy allowing any employee not subject to a mandatory vaccination policy to choose either to be fully vaccinated against COVID-19 or provide proof of regular testing for COVID-19 in accordance with paragraph (g) of this section and wear a face covering in accordance with paragraph (i) of this section.

**NOTE 1 TO PARAGRAPH (d):** Under federal law, including the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964, workers may be entitled to a reasonable accommodation from their employer, absent undue hardship. If the worker requesting a reasonable accommodation cannot be vaccinated and/or wear a face covering because of a disability, as defined by the ADA, the worker may be entitled to a reasonable accommodation. In addition, if the vaccination, and/or testing for COVID-19, and/or wearing a face covering conflicts with a worker’s sincerely held religious belief, practice or observance, the worker may be entitled to a reasonable accommodation. For more information about evaluating requests for reasonable accommodation for disability or sincerely held religious belief, employers should consult the Equal Employment Opportunity Commission’s regulations, guidance, and technical assistance including at: <https://www.eeoc.gov/wyk/what-you-should-know-about-covid-19-and-adarehabilitation-act-and-other-eeo-laws>.

## 1910.501(e) Determination of employee vaccination status.

- 1) The employer must determine the vaccination status of each employee. This determination must include whether the employee is fully vaccinated.
- 2) 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:
  - i. The record of immunization from a health care provider or pharmacy;
  - ii. A copy of the COVID-19 Vaccination Record Card;
  - iii. A copy of medical records documenting the vaccination;
  - iv. A copy of immunization records from a public health, state, or tribal immunization information system; or
  - v. 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);
  - vi. In instances where an employee is unable to produce acceptable proof of vaccination under paragraphs (e)(2)(i) through (v) of this section, a signed and dated statement by the employee:
    - (A) Attesting to their vaccination status (fully vaccinated or partially vaccinated);
    - (B) Attesting that they have lost and are otherwise unable to produce proof required by this section; and
    - (C) Including 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."
- 3) Any employee who does not provide one of the acceptable forms of proof of vaccination status in paragraph (e)(2) of this section to the employer must be treated as not fully vaccinated for the purpose of this section.
- 4) The employer 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. The employer must 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 §1910.1020 and must not be disclosed except as required or authorized by this section or other federal law. These records and roster are not subject to the retention requirements of §1910.1020(d)(1)(i) but must be maintained and preserved while this section remains in effect.

**NOTE 1 TO PARAGRAPH (e)(2)(vi):** 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).



- 5) 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 requirements in paragraphs (e)(1) through (3) of this section only for each employee whose fully vaccinated status has been documented prior to the effective date of this section. For purposes of paragraph (e)(4) of this section, the employer's records of ascertainment of vaccination status for each such person constitute acceptable proof of vaccination.

### **1910.501(f) Employer support for employee vaccination.**

The employer must support COVID-19 vaccination as described in this paragraph.

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

### **1910.501(g) COVID-19 testing for employees who are not fully vaccinated.**

- 1) The employer must ensure that each employee who is not fully vaccinated complies with paragraph (g)(1)(i) or (ii) of this section:
  - i. An employee who reports at least once every 7 days to a workplace where other individuals such as coworkers or customers are present:
    - (A) Must be tested for COVID-19 at least once every 7 days; and
    - (B) 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.
  - ii. 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):
    - (A) Must be tested for COVID-19 within 7 days prior to returning to the workplace; and
    - (B) Must provide documentation of that test result to the employer upon return to the workplace.

**NOTE 1 TO PARAGRAPH (g)(1):** This section does not require the employer to pay for any costs associated with testing; however employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements. This section also does not prohibit the employer from paying for costs associated with testing required by paragraph (g)(1) of this section.

- 2) If an employee does not provide documentation of a COVID-19 test result as required by paragraph (g)(1) of this section, the employer must keep that employee removed from the workplace until the employee provides a test result.
- 3) 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 as required under paragraph (g) of this section for 90 days following the date of their positive test or diagnosis.
- 4) The employer must maintain a record of each test result provided by each employee under paragraph (g)(1) of this section 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 § 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 § 1910.1020(d)(1)(i) but must be maintained and preserved while this section remains in effect.

### **1910.501(h) Employee notification to employer of a positive COVID-19 test and removal.**

Regardless of COVID-19 vaccination status or any COVID-19 testing required under paragraph (g) of this section, the employer must:

- 1) 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
- 2) 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:
  - i. 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;
  - ii. meets the return to work criteria in CDC’s “Isolation Guidance” (incorporated by reference, § 1910.509); or
  - iii. Receives a recommendation to return to work from a licensed healthcare provider.



**NOTE 1 TO PARAGRAPH (h)(2):** This section does not require employers to provide paid time to any employee for removal as a result of a positive COVID-19 test or diagnosis of COVID-19; however, paid time may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements.

## **1910.501(i) Face coverings.**

- 1) 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:
  - i. When an employee is alone in a room with floor to ceiling walls and a closed door.
  - ii. 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.
  - iii. When an employee is wearing a respirator or facemask.
  - iv. 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 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).
- 2) The employer must ensure that any face covering required to be worn by this section:
  - i. Is worn by the employee to fully cover the employee's nose and mouth; and
  - ii. Is replaced when wet, soiled, or damaged (e.g., is ripped, has holes, or has broken ear loops).
- 3) 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.
- 4) 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 §1910.504.
- 5) The employer must not prohibit customers or visitors from wearing face coverings.

**NOTE 1 TO PARAGRAPH (i)(5):** Nothing in this section precludes employers from requiring customers or visitors to wear face coverings.

**NOTE 1 TO PARAGRAPH (i):** Face shields may be worn in addition to face coverings to prevent them from getting wet and soiled.

**NOTE 2 TO PARAGRAPH (i):** This section 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. This section also does not prohibit the employer from paying for costs associated with face coverings required by this section.

## **1910.501(j) Information provided to employees.**

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

- 1) The requirements of this section as well as any employer policies and procedures established to implement this section;
- 2) 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>.
- 3) 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
- 4) 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.

## **1910.501(k) Reporting COVID-19 fatalities and hospitalizations to OSHA.**

- 1) The employer must report to OSHA:
  - i. Each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality.
  - ii. Each work-related COVID-19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization.
- 2) When reporting COVID-19 fatalities and in-patient hospitalizations to OSHA in accordance with paragraph (j)(1) of this section, 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).

## 1910.501(l) Availability of records.

- 1) 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.
- 2) 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.
- 3) The employer must provide to the Assistant Secretary for examination and copying:
  - i. Within 4 business hours of a request, the employer's written policy required by paragraph (d) of this section, and the aggregate numbers described in paragraph (l)(2) of this section; and
  - ii. By the end of the next business day after a request, all other records and other documents required to be maintained by this section.

## 1910.501(m) Dates.

- 1) Effective date. This section is effective as of November 5, 2021.
- 2) Compliance dates.
  - i. Employers must comply with all requirements of this section, except for requirements in paragraph (g) of this section, by December 6, 2021.
  - ii. Employers must comply with the requirements of this section in paragraph (g) by January 4, 2022, but employees who have completed the entire primary vaccination by that date do not have to be tested, even if they have not yet completed the 2-week waiting period.

*As of December 17, 2021, the compliance dates were updated by OSHA. Part 1910.501(m)(i) compliance date is now January 10, 2022 and Part 1910.501(m)(ii) compliance date is now February 9, 2022. OSHA will not issue citations for noncompliance prior to those dates*



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