

## FACT SHEET

# Workers' Rights under the COVID-19 Vaccination and Testing ETS



OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) covers employers with 100 or more employees and requires them to take steps to minimize the risk of COVID-19 transmission in the workplace. The Occupational Safety and Health Act protects workers from retaliation for exercising their rights under the ETS.

### **Workplace Protections: Vaccination, Testing, and Face Coverings**

Employees of employers covered by the ETS have a right to the protections afforded by the standard's requirements. Key requirements employers must follow to protect these employees include:

**Employer Policy on Vaccination.** The ETS requires covered employers to establish, implement, and enforce a written mandatory COVID-19 vaccination policy with an exception for employers that instead establish, implement, and enforce a written policy that requires unvaccinated employees to undergo weekly COVID-19 testing and wear a face covering at the workplace instead of vaccination.

### **Determination of employee vaccination status.**

The ETS requires covered employers to determine the vaccination status of each employee, obtain acceptable proof of vaccination status, and maintain records and a roster of each employee's vaccination status.

### **Employer support for employee vaccination.**

The ETS requires covered employers to support vaccination by providing employees reasonable time, including up to four hours of paid time at the employee's regular rate of pay, to receive

each vaccination dose, and reasonable time and paid sick leave to recover from any side effects experienced following each dose.

**COVID-19 testing for employees who are not fully vaccinated.** The ETS requires covered employers to ensure that each employee who is not fully vaccinated is 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). ***The ETS does not require employers 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. In addition, nothing prohibits employers from voluntarily assuming the costs associated with testing.

**Employee notification to employer of a positive COVID-19 test and removal.** Under the ETS, covered employers must: (1) require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19; (2) immediately remove any employee from the workplace, regardless of vaccination status, who receives a positive COVID-19 test or is diagnosed with COVID-19; and (3) keep removed employees out of the workplace until they [meet the requirements for returning to work](#).

**Face coverings.** The ETS requires covered employers to ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes, except in certain limited circumstances. Employers must not prevent any employee, regardless of vaccination status, from voluntarily wearing a face covering unless it creates a serious workplace hazard (e.g., interfering with the safe operation of equipment).

**Information provided to employees.** The ETS requires covered employers to provide employees with the following in a language and at a literacy level the employees understand: (1) information about the requirements of the ETS and workplace policies and procedures established to implement the ETS; (2) the CDC document “[Key Things to Know About COVID-19 Vaccines](#)”; (3) information about protections against retaliation and discrimination; and (4) information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.

**Reporting COVID-19 fatalities and hospitalizations to OSHA.** The ETS requires covered employers to report work-related COVID-19 fatalities to OSHA within 8 hours and work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the incident.

**Availability of records.** The ETS requires covered employers to make available for examination and copying an individual’s COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee. Covered employers are also required to make available to an employee, or an employee representative, the aggregate

number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

## Protection from Retaliation

The Occupational Safety and Health Act (OSH Act) prohibits retaliation against employees for exercising their rights guaranteed under the Act, including filing an occupational safety or health complaint, reporting a work-related injury or illness, or otherwise exercising any rights afforded by the OSH Act.

## Who Is Protected by the OSH Act?

The OSH Act’s prohibition on retaliation (Section 11(c)) protects private sector workers, it does not cover employees of the U.S. government or State or local government employees.<sup>1</sup> However, it does cover U.S. Postal Service employees.

## What Activities Are Protected under the OSH Act?

A person may not discharge or in any manner retaliate against an employee because the employee exercised any right under the OSH Act. Here are some examples of COVID-19-related activities that are protected:

- Requesting paid time for a COVID-19 vaccination or paid time off for vaccine side effects, when paid time off is required by the ETS.
- Requesting personal protective equipment which the employee reasonably believes is required by an OSHA standard.
- Wearing personal protective equipment required or permitted by an OSHA standard.
- Reporting a COVID-19 infection or exposure to COVID-19 to an employer or OSHA.
- Reporting an unsafe condition to an employer or OSHA.

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<sup>1</sup> Federal employees are protected from retaliation for occupational safety or health activity under procedures established by their agencies pursuant to Executive Order 12196. See 29 CFR 1960.46-47. They are also protected from retaliation for whistleblowing under the Whistleblower Protection Act. For more information visit [www.osc.gov](http://www.osc.gov). Similar protections are provided by State laws in States operating OSHA-approved State Plans. For more information about OSHA State Plans, see [www.osha.gov/stateplans](http://www.osha.gov/stateplans).

- Requesting guidance on workplace safety from an employer, OSHA, or other government entity.
- Refusing to perform a work task if the employee has a reasonable apprehension of death or serious injury, refuses in good faith to perform the task, has no reasonable alternative, and there is insufficient time to eliminate the condition through regular enforcement channels and, where possible, the employee has asked their employer to correct the hazard and it was not corrected. For more information: [www.osha.gov/workers](http://www.osha.gov/workers).

A worker cannot be fired or discriminated against for filing a complaint with OSHA. If you experience retaliation, file a complaint at [www.whistleblowers.gov](http://www.whistleblowers.gov).

### Permissible Disciplinary Action

The OSH Act does not prevent employers from taking disciplinary action against employees for engaging in activities that are not protected. For example, where an employee does not comply with their employer's policy on vaccination, that action would generally not be protected under the OSH Act. The following

examples are actions that would generally not be covered by OSHA's anti-retaliation or discrimination protections:

- Employee failure to provide acceptable documentation of vaccination status;
- Employee failure to provide acceptable weekly COVID-19 test results, when required;
- Falsifying required vaccination documentation or test results; and
- Employee failure to properly wear required face coverings.

### How to File a Complaint

If an employee believes they have been retaliated against, in violation of Section 11(c), they, or their representative, may file a complaint with OSHA. Complaints may be filed verbally or in writing. To file a complaint verbally: Visit a local area office or call OSHA at 1-800-321-OSHA (6742). Information on local area offices is available at [www.osha.gov/contactus/bystate](http://www.osha.gov/contactus/bystate) or can be obtained by calling OSHA at the above phone number.

This Fact Sheet is intended to provide information about the COVID-19 Emergency Temporary Standard. The Occupational Safety and Health Act requires employers to comply with safety and health standards promulgated by OSHA or by a state with an OSHA-approved state plan. However, this Fact Sheet is not itself a standard or regulation, and it creates no new legal obligations.