



OSHA COVID-19 Emergency Temporary Standard (ETS) FAQ

This document was created to provide guidance for the newly published Emergency Temporary Standard (ETS).

The purpose of this document is to provide general advice and does not constitute as legal advice. It may be changed and updated as new information or guidance is released. Please contact your local school district legal counsel with any specific questions.

ETS Rule Generally

Q: Does the state of Iowa need to comply with the ETS?

A: Iowa is one of 22 states and US Territories that have adopted OSHA approved State Plans that cover both public and private sector employees. This means that the new ETS applies to Iowa in both the private and public context, including school corporations.

Q: Does Iowa law affect how our policy is implemented?

A: Iowa recently passed HF 902 which addresses receipt of unemployment benefits following employee termination for refusal to vaccinate for COVID-19:

- Should an employee be terminated for refusing to be vaccinated, the terminated employee will not be disqualified from unemployment benefits on account of the discharge.
- Should an employee be terminated for refusing to be vaccinated, the termination on account of vaccination refusal will not go against the employee's record for future employment.

In addition, the ETS requires employers offer medical and religious accommodation forms. HF 902 adopts this but further specifies that an employer **must** waive the **vaccine** requirement if the employee requests a waiver by submitting the following:

- A statement requesting medical accommodation.
- A statement requesting religious accommodation.

Q: How do I determine if our school corporation is covered by the ETS?

A: Your school corporation is covered by the ETS should it employ more than 100 employees. The following employees are part of the 100-employee count and must comply with the ETS policy unless otherwise exempted by the ETS policy:

1. Full-time employees.
2. Part-time employees.

The following employees are to be considered part of the 100-employee count but are not required to comply with the ETS policy:

1. Employees who work from home.
2. Employees who do not report to a workplace where individuals are present.
3. Employees who work exclusively outdoors.

Note: Independent contractors are not considered part of the 100-employee count and do not have to comply with the ETS policy.

Adopting Policy

Q: What are the policies that must be adopted?

A: OSHA requires employers to implement a mandatory vaccination policy or an alternative policy that allows employees to choose either to be fully vaccinated or to be regularly tested and wear a face covering. IASB provides policy primer and sample policies.

Q: When does the ETS need to be adopted into policy?

A: By December 6, 2021, employers must have adopted the ETS into their policies. IASB provides new policy samples to aide in ETS adoption.

Q: What must be included in the policy?

A: An employer should include all relevant information regarding the policy's effective date, who the policy applies to, deadlines (e.g., for submitting vaccination information, for getting vaccinated), and procedures for compliance and enforcement, all of which are necessary components of an effective plan. In addition, all the following must be included:

1. Requirements for COVID-19 vaccination;
2. Applicable exclusions from the written policy (e.g., medical exceptions, medical necessity that results in a delay in vaccination, reasonable accommodations for workers with disabilities or sincerely held religious beliefs);

3. Information on determining an employee's vaccination status and how this information will be collected;
4. Paid time and sick leave for vaccination purposes;
5. Notification of positive COVID-19 tests and removal of COVID-19 positive employees from the workplace;
6. Information to be provided to employees (e.g., how the employer is making that information available to employees); and
7. Disciplinary action for employees who do not abide by the policy.

Q: How does our district adopt the new policies?

A: Districts that meet the 100-employee threshold must adopt the policy by December 6, 2021. Districts should use the process for emergency adoption of policy. This can be found in IASB sample policy 209.2.

Please note there is a pending federal court case that could result in the issuance of a temporary stay order for our federal circuit, the 8th circuit. Should that be the case, districts would have the option to use an emergency suspension of policy to temporarily pause enforcing this policy. Procedures for temporary suspension of policy can be found in IASB sample policy 209.4.

Q: Who has access to our adopted policy?

A: The policy should be made readily accessible to all employees through the employer's normal methods of distributing information to employees. Employers are not required to submit their written policy to OSHA, unless requested.

Enforcing the Policy and Implementing Procedure

Q: What is the procedural timeline?

A: December 6, 2021:

1. Face covering must begin for any employee who has not provided proof of vaccination or who is known to be unvaccinated.
2. Vaccination status of each employee must be determined along with acceptable proof of vaccination.
3. Require that employees promptly provide notice of positive COVID-19 tests or diagnosis.
4. Remove any employee who received a positive COVID-19 test or diagnosis.
5. Provide employees with information regarding the ETS and your adopted policies.

6. Report any work-related COVID-19 deaths to OSHA within 8 hours.
7. Report any work-related COVID-19 in-patient hospitalizations to OSHA within 24 hours.
8. Maintain records and rosters of vaccination status and make certain records available.

January 4, 2022:

1. Proof of weekly testing for employees who are not fully vaccinated. Under the ETS, an employee is considered “fully vaccinated” two weeks after completing “primary” vaccination with a COVID-19 vaccination (2 doses of Pfizer or Moderna vaccine, one dose of Johnson & Johnson vaccine), with at least the minimum recommended interval between doses. Booster shots are not included in the definition.

Q: Do medical and religious exemptions still apply?

A: Yes, an employee must request an accommodation form from the employer and submit a personal statement. The statement does not need to be attested to by a health professional or religious leader. IASB provides sample accommodation forms for both medical and religious accommodations.

If an employee is entitled to a reasonable accommodation from the vaccination requirement, that employee must still undergo weekly testing and wear a face covering. Medical and religious exemptions may also apply to testing and masking requirements under applicable federal civil rights laws. A separate statement or form verifying the basis for the medical or religious exemption must be provided.

Q: How does the ETS affect district’s already in place COVID-19 requirements such as face covering mandates?

A: The ETS is not meant to preempt non-conflicting mandates. However, the ETS does require that districts provide accommodation forms upon an employee’s request, and should the district approve of the accommodation, the district must accommodate. IASB provides sample medical and religious accommodation request forms.

Please note that Iowa law (HF 902) requires that employers **must** waive the **vaccination** requirement should an employee seek medical or religious accommodation.

Q: What about the validity of an exemption or accommodation request?

A: The ETS requires that an employee who requests accommodation or exemption attest to the validity of their request. Keeping this in mind, it is not recommended that a district instigate investigations into the validity of an employee’s medical conditions, disabilities, or sincerely held religious belief, practice, or observance considering EEO laws, the ADA, and Rehabilitation Act.

Q: How are employees to obtain their vaccination?

A: Employers are required to provide a reasonable time with a maximum of four hours paid time off to each employee during work hours to obtain their vaccination.

Additionally, employers must also provide “reasonable time” and paid sick leave to recover from side effects experienced following any vaccination. While the ETS does not define “reasonable time,” the OSHA FAQs suggest that an employer who makes available up to two days of paid sick leave per vaccination dose for recovery from side effects would generally be in compliance.

Please note that an employer is not obligated to reimburse any travel costs associated with obtaining the vaccination.

Q: Is an employer obligated to pay for testing or vaccination?

A: No, an employer is not generally obligated to pay for an employee’s testing nor vaccination (although vaccination is free). However, employer payment for testing may be required by other laws, regulations or individual collective bargaining agreements, and of course, employers may voluntarily agree to pay for employee testing. If you have any question as to whether you may have an obligation to pay for testing due to specific laws or an existing collective bargaining agreement, please contact your legal counsel.

Q: What about recovery time?

A: Employers are required to provide reasonable time and paid sick leave to employees to recover from any side effects experienced following the primary vaccination does.

An employer may require an employee to use already accrued paid sick leave when recovering from side effects of the vaccine and/or put a cap on the time the employer decides to provide for an employee to recover from the side effects.

However, employers **cannot** require employees to use advanced sick leave to cover their recovery time nor can an employer require an employee to incur negative paid sick leave.

- What if an employee refuses to adhere to any portion of the adopted policies, and are not entitled to accommodations/exemptions? What are the disciplinary actions an employer is may impose?

An employee may be subject to discipline up to and including termination for failure to follow the adopted policy. The ETS requires employers to remove employees from the workplace who do not provide proof of vaccination, do not provide proof of a negative test, refuse to get tested or those who do not have accommodations/exemptions and refuse to wear a mask.

Employer Record Keeping

Q: Who needs to access the new policies?

A: The policy must be made readily available to all employees through the employer's normal methods of distributing information to employees. Employers are not required to submit their written policy to OSHA, unless requested. All adopted board policies are made available to the community through the district's policy manual.

Q: Does an employer have to keep track of vaccination records?

A: An employer must maintain employees' proof of vaccination. An employee's vaccination record is part of the employee's medical records and must be kept confidential. In addition, the vaccination roster that an employer must keep is also considered confidential and part of an employee's medical record. The record must be maintained for as long as the ETS is in effect.

Q: What about employees that opt for the weekly testing and masking option? Do employers need to keep record of test results?

A: Yes, it is the employer's responsibility to maintain a record of each test result. These test results must be maintained as part of the employee's medical records and are confidential. They must be maintained and preserved as long as the ETS is in effect.

Q: What kind of documents constitute as proof of vaccination?

A: Proof of vaccination is required. This includes proof indicating whether the employee is fully or partially vaccinated. Please note that districts are advised to collect as little medical documentation as possible while remaining in compliance of collecting proof of vaccination. Any one of the following documents constitute as proof of vaccination:

1. A record of vaccination from a health care provider or pharmacy.
2. United States COVID-19 Vaccination Record Card.
3. Medical records documenting the vaccination.
4. Immunization records from a public health, state, or tribal immunization information system.
5. Any other official documentation that contains the type of vaccination administered, dates of administration, and the name of the health care professional or clinic site that administered the vaccine.

Q: What happens if an employee’s vaccination card is missing?

A: An employee can contact their vaccination provider and obtain a new copy or navigate Iowa’s health departments’ immunization information system. [Novel Coronavirus—COVID-19 Vaccine Information \(iowa.gov\)](#).

Q: What happens if an employee is unable to provide any of the required documentation to prove vaccination status?

A: If an employee is unable to obtain any of the above, a signed and dated statement by the employee is acceptable. The statement must:

1. Attest to their vaccination status (fully or partially).
2. Attest that they have lost or are otherwise unable to produce proof as listed above.
3. 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.”

Q: What records do employers need to report to OSHA?

A: Employers must report **work-related** COVID-19 fatalities within 8 hours of learning about the fatality and report **work-related** COVID-19 in-patient hospitalizations within 24 hours of learning about the hospitalizations. OSHA cites to federal law to define “work related.” In general, the law states that an injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting injury or illness. Work relatedness is presumed (29 CFR section 1904.5).

Should there be a question as to whether or not a COVID-19 employee death or in-patient hospitalization is “work related,” it is **highly** recommended that you seek advice from your school legal counsel regarding your specific factual circumstances.

Liability

Q: What happens should an employer refuse to implement the ETS?

A: OSHA has adopted its “egregious violation” policy. This policy generally states that OSHA has the authority to “impose sufficiently large penalties to achieve appropriate deterrence.” Under this policy OSHA is not limited to a single citation but has authority to issue separate penalties for each instance of non-compliance. Neither the ETS nor OSHA have offered any further explanation on what these citations might be. However, employers not enforcing OSHA’s ETS vaccination rule could be cited by OSHA and fined up to \$13,653 for each serious violation and up to \$136,532 for a willful violation.

Q: What if an employer is unable to get their employees tested due to lack of testing supplies?

A: OSHA has stated that there is enough COVID-19 tests available and adequate laboratory capacity to meet an influx of testing. However, should an employer still find themselves unable to comply due to testing deficiencies, OSHA has determined that it will look towards the employer’s effort to comply, as well as the pattern and practice of the employer’s testing program. OSHA has stated that they will consider refraining from enforcement where the facts show good faith in attempting to comply with the ETS. OSHA has not specified what non-compliance penalty might be, but generally states that “This policy utilizes OSHA’s authority to issue a separate penalty (citation) for each instance of noncompliance with the OSHA standard.”

Q: Is an employer liable for employee non-compliance?

A: The ETS does not outline the sort of repercussions an employer may impose on a non-compliant employee. In addition, OSHA has not clarified what penalties employers may impose. However, an employer may be subject to OSHA citations should the employer be found to be out of compliance with the standard. OSHA has indicated that non-compliance by an employer may include retaining employees who are not compliant to the standard, the standard alternative, or any exemptions.

Other Resources

Emergency Temporary Standard: [2021-23643.pdf \(govinfo.gov\)](#)

Federal Publication: [Federal Register :: COVID-19 Vaccination and Testing: Emergency Temporary Standard](#)

ETS Summary: [COVID-19 Vaccination and Testing ETS \(osha.gov\)](#)

ETS Fact Sheet: [COVID-19 Vaccination and Testing ETS \(osha.gov\)](#)

ETS FAQ: [COVID-19 Vaccination and Testing ETS - Frequently Asked Questions | Occupational Safety and Health Administration \(osha.gov\)](#)

Record Retention: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

Accommodations and Exemptions: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

CDC’s “Isolation Guidance”: [COVID-19 Quarantine and Isolation | CDC](#)

“Key Things to Know About COVID-19 Vaccines”: [Key Things to Know About COVID-19 Vaccines \(cdc.gov\)](#)