

2021—4th Quarter Newsletter

Dear Friends,

As we round out the final Quarter of 2021, there have been a few OSHA directives and updates, but none have gotten our client's attention more than the announcement of the upcoming ETS regarding COVID-19 Vaccination. With these rapidly changing developments it can get confusing, but here are a few things we do know:

- There is not an ETS yet, though we expect it to be released in the coming days/weeks
- This will only affect companies with 100 or more employees.
- There will be an option to vaccinate OR test weekly.

Once OSHA has released the ETS, we will update our clients with all the information they need to keep their employees safe, and themselves OSHA compliant. Until then, we recommend that everyone continue to follow CDC and OSHA recommendations .

Yours in Safety,

Mark A. Taliaferro

President

Safety Temps LTD./ National Safety Consulting

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Prepare Now for an OSHA Emergency Temporary Standard on COVID-19

National Law Review; Sept. 13, 2021

Employers with 100 or more employees should expect a new emergency temporary standard (ETS) from the Occupational Safety and Health Administration (OSHA) requiring them to mandate that all employees be vaccinated against COVID-19 or else undergo weekly testing. News of this planned ETS came on September 9, 2021 from President Biden. His new COVID-19 Action Plan explains in relevant part:

Requiring All Employers with 100+ Employees to Ensure their Workers are Vaccinated or Tested Weekly

The 100-employee trigger for coverage of the ETS will apply on a company-wide basis, rather than on the number of employees at a particular site, according to Ann Rosenthal. She said that OSHA encourages smaller employers to follow CDC guidance. She noted that U.S. Postal Service employees will be subject to the ETS.

Violations of the new ETS would likely be considered either "serious" or "willful." The current maximum penalty for a "serious" violation is \$13,653 per violation. The current maximum penalty for a "willful" violation is \$136,532.

The ETS will address what evidence of vaccination, if any, is required, said Ann Rosenthal, senior advisor at OSHA. President Biden's COVID-19 Action Plan says that the ETS will require all employers with 100 or more employees to ensure their workforce is "fully" vaccinated or be tested,

The ETS will have protections for employees who are unable to be vaccinated due to medical or religious reasons, according to James Frederick, Acting Administrator of OSHA, on the September 10 conference call. *(continued on pg. 2)*

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Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients, or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption in paragraphs (a)(2)(iv) and (v) of this section.

Ann Rosenthal indicated that the ETS will clarify whether employees would be considered “vaccinated” for purposes of the rule if they have only received one dose of a two-dose regimen.

As stated by President Biden, the ETS apparently will allow employers to permit unvaccinated employees to be tested weekly instead of being vaccinated. According to James Frederick, however, employers will have the option of requiring all employees to be vaccinated unless they qualify for an exemption.

OSHA has previously [indicated](#) that reactions to a COVID-19 vaccination are not recordable under 29 C.F.R. Part 1904, at least for now:

OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, and also does not wish to disincentivize employers’ vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904’s recording requirements to require any employers to record worker side effects from COVID-19 vaccination at least through May 2022. We will

reevaluate the agency’s position at that time to determine the best course of action moving forward.

The healthcare ETS requires employers to provide reasonable paid time off for employee vaccination and possible side effects:

The employer must support COVID-19 vaccination for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination.

29 C.F.R. § 1910.502(m). The new ETS is expected to include similar a requirement. The COVID-19 Action Plan states:

To continue efforts to ensure that no worker loses a dollar of pay because they get vaccinated, OSHA is developing a rule that will require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated or to recover if they are under the weather post-vaccination. This requirement will be implemented through the ETS.

President Biden’s September 9 [remarks](#) asserted:

The Department of Labor will require employers with 100 or more workers to give those workers paid time off to get vaccinated. No one should lose pay in order to get vaccinated or take a loved one to get vaccinated.

James Frederick indicated that the ETS will allow employers to have employees use their allocated paid (or personal) time off (PTO) for vaccinations and recovery from vaccinations.
(continued on pg.3)

COORDINATOR CORNER: Dakota Riddle; § 1926



In the summer of 2014, Dakota R. joined National Safety Consulting as an Intern while earning his B.S. degree in Occupational Safety and Health from Murray State. After 7 years of safety management experience, we were fortunate that he made his way back to where it all began.

Dakota is a dedicated employee who consistently goes above and beyond in assisting our clients while developing safety programs, performing site audits, conducting training, and lending his expertise.

Dakota and his wife Emily reside in Illinois and are anxiously awaiting the birth of their first child in November, a baby girl!

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What to Do Now

While the detailed requirements of the OSHA and state ETSs will not be immediately available, employers should already be considering how they will meet the ETS requirements once compliance becomes mandatory. Among the considerations employers should address these:

- Whether the ETS applies to their workplaces.
- How to deal with remote workers.
- How to coordinate with onsite contractors about compliance, particularly those with fewer than 100 employees.
- How to identify vaccinated and unvaccinated employees, and how to update that information.
- How employees are to report the results of testing.
- Whether to require proof of vaccination, and if so, what proof to require.
- Whether to sponsor on-site vaccination clinics.

- Whether to sponsor on-site testing.
- Whether to supply test kits, and if so, how to obtain them; and if not, how to instruct employees about obtaining test kits.
- Whether to pay for test kits, and if so, how to do so.
- How to provide paid time off for vaccination and recovery.
- How to deal with employees who refuse both vaccination and testing.
- How to keep records supporting compliance, keeping in mind that the standard on access to employee exposure and medical records, 29 C.F.R. § 1910.1020, may apply to some records.

In addition, employers should continue to consider OSHA's [guidance](#) (updated August 13, 2021) on other aspects of protecting workers from COVID-19. That guidance, and relevant CDC guidance, is summarized in our previous [alert](#). As applicable, employers should also consider the September 9, 2021 [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) and a related White House [blog](#). Ann Rosenthal said that nothing in the ETS and the federal contractor requirements would be inconsistent.◇

OSHA ALERT

Winter weather can expose outdoor workers to frostbite, hypothermia, and cold stress, all of which can be fatal. As we transition into cooler months, it is necessary to understand the wind chill to better prepare and perform the work safely.

Follow these work practices to stay safe in cold weather:

Know the symptoms of [cold stress](#); reddening skin, tingling pain, swelling, leg cramps, numbness, and blisters.

Dress properly; wear at least three layers of loose-fitting clothing, insulated gloves and boots, and cover your head.

Monitor your physical condition and that of your coworkers.

Stay dry and pack extra clothes; moisture can increase heat loss from the body.

Take frequent breaks in warm, dry areas.

Drink warm liquids.

Make sure you fleet of vehicles are equipped with winter weather emergency kits and be cautious when driving in snow and ice.

For more safety tips and the Work/ Warm-up Schedule visit OSHA's [Winter Weather](#) page



OSHA Expanding Ways to Protect Workers from Hazards of Extreme Heat

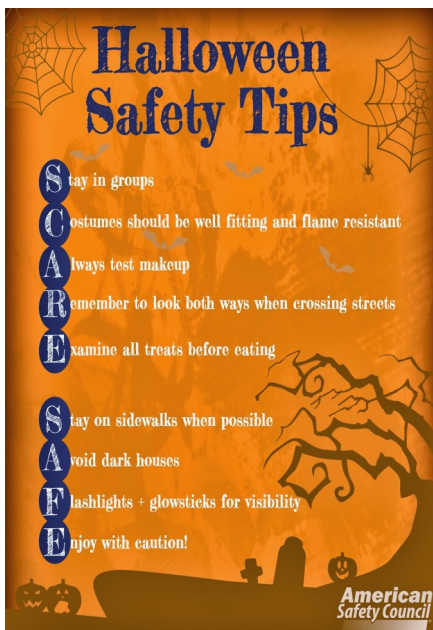
EHS Today ; September 21, 2021

OSHA is implementing an enforcement initiative on heat-related hazards, developing a National Emphasis Program on heat inspections, and launching a rulemaking process to develop a workplace heat standard.

OSHA Area Directors across the nation will institute the following:

- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses and initiate an onsite investigation where possible.
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization) or opening an inspection when they observe employees performing strenuous work in hot conditions.
- Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

In October 2021, OSHA will take a significant step toward a federal heat standard to ensure protections in workplaces across the country by issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. The advance notice will initiate a comment period allowing OSHA to gather diverse perspectives and technical expertise on topics including heat stress thresholds, heat acclimatization planning, exposure monitoring and strategies to protect workers. ◇



Our newsletter is going digital!

This will make safety information from our Eblast and posted newsletter articles searchable and easier to find on the web and on our website. We are excited to offer this service to our clients to ensure you have the information you need at your fingertips!



Links found in this issue

Prepare Now for an OSHA Emergency Temporary Standard on COVID-19 (pg. 1)
<https://www.natlawreview.com/article/prepare-now-new-osh-emergency-temporary-standard-covid-19>

OSHA Expanding Ways to Protect Workers from Hazards of Extreme Heat (pg. 4)
<https://www.ehstoday.com/health/article/21140731/digital-distraction-in-industrial-settings-causing-accidents>