

THE NEXT PHASE OF COVID 2.0

WEBINAR Q&A

Q: Why with so many people being vaccinated that the cases are up so bad?

A: For all medical related questions, visit <https://www.cdc.gov/> for update information

Q: What are the rates break through cases for those who got COVID already?

A: <https://www.cdc.gov/>

Q: If you have taken the Johnson & Johnson vaccine should you or can you take another vaccine?

A: <https://www.cdc.gov/>

Q: Will temp employees be added to your account of full-time employees to get to that 100-employee mark???? We have a blend of full-time employees and utilize staffing agencies as well.

A: It is likely that temporary, part time and full time employees will be considered to reach the 100+ EE total, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Do employers have to pay for testing if mandated?

A: It is possible that employers will be expected to cover the cost of the testing, which may be offset by health insurance coverage, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Will the Federal Government absorb the cost of weekly Covid Testing or will this burden be pushed onto employers?

A: It is possible that employers will be expected to cover the cost of the testing, which may be offset by health insurance coverage, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: If the vaccine is a mandate, but an employee chooses not to get the vaccine, who pays the cost for the COVID testing?

A: It is possible that employers will be expected to cover the cost of the testing, which may be offset by health insurance coverage, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

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Q: Does the Federal vaccination mandate for Federal contractors also include sub-contractors on Federal projects?

A: Sub-contractors will also need to comply, and the contractor is expected to verify that all sub-contractors meet the federal requirements.

Q: Wouldn't it be more effective to require the employee to pay for testing on their own time, than to place the burden of cost on the employer? If the goal is to motivate an employee that would be much more effective than simply saying "oh well my employer is paying me to get tested and paying me for the time it takes.

A: From a legal perspective, as this is a work requirement, employers should consider paying for the time to be tested, but please check with your counsel for guidance.

Q: So, will the fed COVID time off be separate from CA SPL? Will there be 2 buckets of time?

A: Yes. Note that SB 95 (the California Supplemental Sick Leave for COVID_19) will expire on September 30, 2021.

Q: PTO Requirements: How does this apply to employers already offering Paid Time off to their employers?

A: It depends on how the PTO is structured and whether it is unlimited. In general, employers will be expected to provide paid time off for the reasons set forth for COVID-19 vaccination. Please check with your counsel for guidance.

Q: Can employers in CA with less than 100 employees legally require all employees to be vaccinated?

A: Yes, if certain requirements are met. Under the ADA, an employer may insist all employees to meet a standard that is job-related and consistent with business necessity. This could include a safety-related standard requiring COVID-19 vaccination. But if an employee cannot meet such a standard because of a disability, the employer may not require that they comply. The exception to that is if the employee's non-compliance poses a threat to their health or safety or that of others in the workplace. For more details, read [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws \(https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws\)](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) , and check with your counsel for guidance.

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Q: With regard to weekly testing - is there a specific type of test method stipulated given to false positives & negatives that occur with less accurate methods?

A: It is expected that a PCR test will suffice, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: To be clear, what the president indicated was that companies EITHER make vaccine mandatory OR test weekly. I think there is a distinction...what we are all hearing is that the president is making vaccines mandatory, which is actually not the case. Can you clarify this.

A: For private employers with 100+ employees, it is EITHER vaccination or submit to weekly testing. OSHA is expected to provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Do you expect employer or employee to be tasked with administering/making testing available? The announcement re pending ETS was unclear on this point.

A: It is expected that employers will need to enforce the testing requirements, of which one option would be having employees arrange for and obtain testing, rather than it being administered by the employer. OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: So, we work in construction all over California how do you test employees?

A: It is expected that employers will need to enforce the testing requirements, of which one option would be having employees arrange for and obtain testing, rather than it being administered by the employer. OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Is it possible to test folks in batches instead of just individually?

A: So long as the weekly testing requirements are met, this appears to be an acceptable method. OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Will employers be able to use rapid antigen tests or will PCR tests be required for weekly testing?

A: It is expected that a PCR test will suffice, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

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Q: Are we required to record the weekly tests and results in a medical file?

A: It is expected that employers will need to keep records of the test results. OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: The first ETS took over 6 months to come out and that ended up being very different than what actually came out. Is the view that it will be different than the little information that has been provided to date?

A: It is expected that the ETS will be developed more quickly, and consistent with the President's announced plan for vaccination or weekly testing.

Q: Also, has there been any information regarding the "100" employees? Is there a thought that the "100" may be per employer location?

A: It is likely that temporary, part time and full time employees will be considered to reach the 100+ EE total, but OSHA will provide final guidance when the Emergency Temporary Standards are released in the near future.

Q: Is a face shield considered a proper face covering in place of a face mask?

A: No. Under the Cal/OSHA ETS, "face covering" means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth.

A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

Q: Can we ask for a letter from a pastor for a religious exemption?

A: Yes. Please consult with your counsel for guidance.

Q: Did he have to put down the ones who have religious beliefs and exemptions?

A: We recommend employers maintain two lists: one for those who are vaccinated, and another for those who will be subjected to the weekly testing requirements, rather than indicating that an employee has a disability and/or a religious exemption.

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WEBINAR Q&A

Q: Is there a timeline for the rules regarding the mandated vaccines to be developed?

A: Given the urgency in the President's plan, we anticipate OSHA's rulemaking will come in the near future. Once the rules are finalized, we also expect that employers will be provided time to comply, but we anticipate it will be in the near future.

Q: Also, once they are developed, what is the timeline for implementation?

A: Given the urgency in the President's plan, we anticipate OSHA's rulemaking will come in the near future. Once the rules are finalized, we also expect that employers will be provided time to comply, but we anticipate it will be in the near future.

For additional law related questions, please contact:

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