Engage PEO Client Alert

OSHA Federal Vaccine Mandate Reinstated

What's New: The vaccine mandate issued as an Emergency Temporary Standard (ETS) by the Occupational Health and Safety Administration (OSHA) in September was upheld by the Sixth Circuit Court of Appeals on December 17, 2021. The case is expected to be taken up by the Supreme Court as legal challenges to the Sixth Circuit decision have already been filed.

Why It Matters: The federal government mandate is in effect for employers with 100 or more employees to implement COVID-19 vaccinations or testing outlined in the ETS. Employers are required to come into compliance with the ETS by January 10, 2022.

OSHA will not issue citations for noncompliance before that date and will not issue citations for noncompliance of the testing requirements before February 9, 2022 so long as an employer is exercising reasonable, good faith efforts to come into compliance with the ETS.

Exemptions: Workers who do not report to a workplace where other individuals are present or who telework from home, and workers who perform their work exclusively outdoors, do not need to comply. Exemptions for religious and medical reasons also apply.

What Employers Should Do Now

- **Determine whether you are covered by the ETS** –workplace normally covered by OSHA; 100 or more employees; exempt because covered by the Healthcare ETS or Federal Contractor mandate. For clients in states that may have issued recent regulations that conflict with the OSHA ETS, please contact your HR Consultant or Account Manager if you have concerns about how to proceed. For many of these states, federal law will prevail.
- **Familiarize yourself with the ETS**. Engage has prepared Frequently Asked Questions.
- **Collect information from employees about their vaccination status and set up your company's employee vaccination and testing roster** (see Engage FAQs). The percentage of vaccinated workers might help you determine whether you will mandate vaccines or provide the testing option.
- **Communicate with employees that federal law requires your company to implement a mandatory vaccination or testing policy, and which of these policies you will be implementing on or before January 10, 2022**. Download sample policy templates from OSHA's ETS resource webpage.

Be prepared for changes. Engage will notify clients of the expected Supreme Court decision. See OSHA's COVID-19 Vaccination and Testing ETS resource webpage. See our September 2021 Client Alert about the federal government's vaccine mandate announcement.