

# COVID-19 Workplace Preparedness

**Are You Ready for  
an Inspection If  
OSHA Comes A-  
Knockin?**

**Patrick J. Veters**  
Partner

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# Please note:

The information described in this program is general in nature, and may not apply to your specific situation. Legal advice should be sought before taking action based on the information discussed. No attorney-client relationship is formed merely by your attendance at this event.

# Status of President Biden's COVID Action Plans

- Pursuant to his “Path out the Pandemic - COVID-19 Action Plan” President Biden announced on September 9<sup>th</sup> that he was directing OSHA to issue a new Emergency Temporary Standard (ETS) that would require many employers to provide a time for employees to get vaccinated as well as to implement “soft” vaccine mandates, i.e. require employees to either get fully vaccinated or submit to weekly testing.
- On October 12<sup>th</sup> OSHA delivered a proposed COVID-19 vaccination and testing ETS to the White House's Office of Management and Budget for review.
- There has been at least 68 “stakeholder meetings” to discuss the proposed impact of the ETS on employers and employees.
- The final ETS could be announced any day now.

# Focus of Employer Advocacy Groups

## Employer Advocacy groups have focused on the following issues:

- The ETS should have a “soft” phased-in implementation with the vaccine mandate not kicking in until at least January of 2022.
- Employers should not be mandated to pay for time getting tested or hard cost of testing.
- The ETS should include flexibility for employers who document vaccine verification status and test results.
- Documentation collected in compliance with the ETS should not be required to be preserved for decades as in many other OSHA instances. There also should be consistency across state lines so that state OSHA plans and Fed OSHA plans are similar, if not identical.
- There should also be qualified exemptions for truck drivers, warehouse operators, etc. who are critical to the nation’s infrastructure supply chain.
- ETS should not prohibit employers from implementing “hard” vaccine mandate policies.
- Capping Paid Time Off (PTO) for employee time getting vaccinated should be capped at 4 hours per dose.
- The calculation of the 100 employee threshold for ETS coverage should not include employees working remotely.

# State's Response to the Upcoming ETS

- Texas Governor Abbott issued an Executive Order in direct contravention of Fed OSHA's mandate for employee vaccinations. South Carolina OSHA and its governor have threatened to refuse to adopt a “substantially similar” vaccination and testing emergency rule setting up a possible takeover by Fed OSHA.
- Several state attorneys general have indicated their intention to bring legal challenges to both President Biden's federal contractor and healthcare vaccine mandates.

# New Head of OSHA

- Doug Parker, former head of CAL OSHA was recently confirmed as President Biden's choice for Assistant Secretary of Labor for OSHA.
- This post has been vacant for over 5 years. Parker's nomination and confirmation is consistent with President Biden's promise to build a Pro-Union Department of Labor.

# Hiring New Employees

- Taking temperature of applicants is not permitted
- Neither is requiring COVID-19 testing or antibody testing
- Once a conditional job offer has been made, may screen applicants for symptoms (as long as consistent)
- What if COVID-19 test is positive?
  - Can delay start date
  - May be able to withdraw job offer if circumstances warrant
- What if potential hire is higher risk according to CDC?
  - Do not unilaterally postpone start date or withdraw job offer
  - Discuss telework, voluntary postponement of start date, or other possible accommodations

# Medical Testing and Inquiries

- Permitted to take temperatures
  - If taken by a physician, nurse or other health care personnel or technician and written down, current OSHA guidance requires record be kept for **30 years**
- Allowed to require COVID-19 testing, but not antibody testing
- Do not ask about health of family members
  - Instead, ask if employee has had contact with anyone who has been diagnosed with or has symptoms of COVID-19
- Obligated to **keep medical information confidential**
  - Store separately from employee's personnel file



# When An Employee Tests Positive for COVID-19

- Focus on individual who tested positive and gather information to determine extent of potential exposure
- Plan for cleaning - evaluate best sanitation procedures
  - Does the entire office need to be closed, or can you isolate the work area?
- Notify co-workers that were physically present and in close contact
  - Maintain confidentiality of infected employee
  - Should co-workers with direct contact or who were potentially exposed be instructed to self-isolate/quarantine?

# Current CDC Return to Work Guidance

- **Non-Testing Policy:** After all three of the following occur:
  1. No fever for 24 hours - without use of fever reducing medicine
  2. Other symptoms have improved (cough, shortness of breath, etc.)
  3. At least ten (10) days have passed since first symptoms

# Contact Information



Patrick J. Veters  
Partner  
(504) 582-8620  
[pveters@joneswalker.com](mailto:pveters@joneswalker.com)