



Indiana
State
Teachers
Association

What You Need to Know About the Anticipated OSHA Emergency Temporary Standard on Vaccines

On September 9, 2021, President Joe Biden announced a series of initiatives to combat the COVID-19 pandemic, including his call for the Occupational Safety and Health Administration (OSHA) to issue a new emergency temporary standard (ETS) that would require employers with at least 100 employees to ensure that all employees are either vaccinated against COVID-19 or are tested for COVID-19 at least on a weekly basis. NEA's supportive statement in response to the president's COVID-19 Action Plan can be found [here](#).

This contemplated new "Vaccine ETS," has not yet been issued by OSHA, but is anticipated to issue within the next few weeks. The following explains who will be protected by the anticipated Vaccine ETS, on what timetable, and what NEA is continuing to press for in terms of OSHA action on these issues.

1. To which employers will the Vaccine ETS apply?

The proposed Vaccine ETS would be issued under the Occupational Health and Safety Act, 29 U.S.C. § 651 *et seq.* ("OSH Act"), the principal federal workplace safety law. OSHA applies, and is enforced, under a two-track system. States that have adopted state occupational safety and health plans ("state OSH plans") approved by OSHA both have the authority to enforce those plans and the obligation to adopt enforceable occupational safety and health standards that are at least as protective as OSHA standards. The OSH-plan states are Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

In OSH-plan states, state occupational safety and health agencies will be required to adopt either the same ETS or one that is at least as protective of employees as the OSHA-issued Vaccine ETS. The terms of the standard actually issued by each OSH plan state will determine the coverage and scope of that state's standard.

2. How will the Vaccine ETS be applied to public employers in OSH-plan states?

When OSHA issues the Vaccine ETS, OSH plan states must notify OSHA within 15 days of the action they intend to take to put a standard in place that is at least as protective as the federal ETS. OSH plan states are further obligated to adopt an ETS within 30 days of the promulgation of the final OSHA ETS. As noted above, in such OSH-plan states, it is only when the relevant state occupational safety and health agency issues its own ETS that any requirements are applied to employers' subject to the state's OSH plan.

3. What will the Vaccine ETS require?

President Biden has called for an ETS that would require covered employers to (1) ensure that employees are either vaccinated against COVID-19 or, for workers who remain unvaccinated, that such employees are tested for COVID-19 at least once a week; and (2) provide paid leave for employees to receive vaccinations and, if necessary, to recover from side effects from the vaccine.

4. When will the Vaccine ETS be issued and become effective?

Because of its emergency nature, an OSHA ETS does not have to go through the regular, often-time-consuming, rulemaking process. NEA has been advised that OSHA is expected to issue the Vaccine ETS in the next few weeks. In OSH plan states, state occupational safety and health agencies are, as noted above, required to issue their own identical or equally protective standards within 30 days of issuance of the federal ETS. (It is important to note that state agencies do not always comply with these federal timelines.) Once effective, employers will have a certain period of time in which to come into compliance; we expect the ETS to define that period.

5. How is the ETS enforced?

In OSH plan states, enforcement is handled by state occupational safety and health agencies, but there are other potential avenues for seeking compliance with the OSHA ETS including via complaints to federal OSHA about problems with the operation or administration of state OSH agencies.

6. How is the June 2021 Health Care ETS different from the new Vaccine ETS?

In June of this year, OSHA issued an ETS to protect health care and health care support service workers from workplace exposure to COVID-19 (“Healthcare ETS”). The Healthcare ETS applies in situations where employees are providing direct patient care. In educational settings that means the Healthcare ETS only applies in settings such as a school nurse’s office or work done by a school nurse elsewhere in a school. The Healthcare ETS provides for a broad array of COVID-19 protections but does not mandate vaccines. If adopted as outlined by President Biden, the Vaccine ETS will apply to a far greater number and wider array of employees since it is not limited to health care workers. At the same time, however, the anticipated provisions of the Vaccine ETS will be narrower, because as proposed it would only require employers to implement vaccinate-or-test for employees and not require any other COVID safety protocols. For more on the Health Care ETS, see this [OSHA summary](#) and [frequently asked question document](#).

7. What is NEA asking for in its own ETS petition?

Since the outset of the Biden administration, NEA has been pushing for issuance of a broadly protective ETS that would protect workers against infection by COVID-19. Most recently, in August 2021, NEA reiterated that request by way of a formal lengthy petition to OSHA requesting that it issue an ETS that would protect all employees in OSHA-covered workplaces and thereby extend protections against the workplace transmission of COVID-19 to some 130 million workers.



NEA's petition explains that OSHA's rationale for limiting protection to health care workers made little sense in June, and certainly does not now, given the exponential rise in COVID-19 transmission rates due to the Delta variant and the continuing lagging vaccination rates.

The NEA petition, which is still pending with OSHA, requests that OSHA protect worker health and safety by issuing an ETS that puts in place the following six protections in all OSHA-covered workplaces:

- Universal masking using appropriately protective surgical-type masks.
- Physical distancing of at least 6 feet to the fullest extent feasible.
- Adequate ventilation in indoor workplaces.
- Employee symptom screening, coupled with reporting of COVID-19 infections and appropriate quarantining of close contacts.
- The development and implementation of COVID-19 plans for all OSHA Covered workplaces and employee training on those plans.
- Creating and retaining logs of employees who are confirmed to be COVID-19 positive and reporting to OSHA of work-related COVID-19 hospitalizations and fatalities.

8. How can affiliates join the NEA petition and call for greater health and safety protections against COVID-19?

ISTA has signed a [letter of support](#), with other NEA state affiliates, of the NEA petition. The letter urges OSHA to include in the Vaccine ETS, or a subsequently issued ETS, the six protections set forth above. As the letter explains, there is nothing more important than keeping students and staff in schools safe so that in-person instruction can continue. And it is very clear at this point that the only way to do that is to put federal mandates in place that will put pressure on states, through OSHA as well as litigation exposure, to put the basic protections in place that are necessary to contain and limit COVID-19 infections in the schools.

In addition, all affiliates in state OSH plan states should develop plans now for putting pressure on their state health and safety agencies to adopt an ETS, as they will be required to do once the Vaccine ETS is issued, asking them not only to include the protections in the Vaccine ETS but also the six basic protections listed above.





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