DECEMBER 21, 2021 | OSHA RULEMAKINGS & STANDARDS

FAQs About OSHA's COVID-19 Vaccination, Testing, and Face Coverings Emergency Temporary Standard

By Conn Maciel Carey's COVID-19 Task Force

In a Friday night surprise (December 17th), the US Court of Appeals for the Sixth Circuit dissolved the nationwide stay of OSHA's Vaccination, Testing, and Face Coverings ETS, so the ETS is alive and well (unless the U.S. Supreme Court puts it back on ice). Accordingly, it is time for employers to take the steps necessary to come into compliance with the ETS. To help our clients and friends in industry, Conn Maciel Carey LLP's national OSHA Practice has created this extensive set of Q&As about OSHA's COVID-19 Vaccinate-or-Test ETS.

The Q&A document addresses the current status of the ETS and the legal challenges to it, who is covered and who is exempted from the rule, the core elements of the ETS (i.e., what is required and prohibited by the ETS, when the requirements kick-in, etc.), and other issues around enforcement and compliance strategy.

In addition to this FAQ resource, we have also been **working with dozens of companies to help them develop custom, compliant written COVID-19 Vaccination, Testing, and Face Coverings Policies, along with the necessary ancillary forms**, as required by the ETS. We have a questionnaire that we can work through with you to understand and make the best policy choices for your organization (e.g., what cap you will set for paid recovery time; whether to supply test kits to employees or require them to take tests offsite; how you will communicate to employees the information required to be shared; etc.), and with those answers, we develop a customized written program including:

- A written COVID-19 Vaccination, Testing, and Face Coverings Policy
- (Attachment A) – Form for Interactive Process to Address Religious/Medical Exemptions
- (Attachment B) – Form for Employee Self-Attestation of Vaccination Status
- (Attachment C) – Confidential Employee Vaccination Status Roster
- (Attachment D) – OSHA COVID-19 Recordkeeping and Reporting Flowcharts
- (Attachment E) – Confidential Employee COVID-19 Testing Results Tracking Record
- (Attachment F) – OSHA COVID-19 Vaccination and Testing ETS Information Package (for the employee communication requirement)

Critically, doing this upfront work, even if you are not prepared to fully implement the program, will put you in a very good position to benefit from the enforcement discretion OSHA has indicated it will offer to companies working in good faith to come into compliance. We will get on the phone with your safety or operations team to

review the compliance options and turn around a program quickly.

Under the circumstances and in light of the time urgency associated with this effort, we have been doing this work for a modest fixed fee rather than charging our hourly rates.

If your organization has already developed a written policy, we can also help with a very efficient gap assessment.

Please contact Eric Conn, Chair of CMC's OSHA Practice or any other member of our COVID-19 Task Force if you have any questions, or if we can help you come into compliance with OSHA's new emergency rule.