

Covid Mandate 11/5/2021 - FAQs

Who does this rule apply to?

Any employer with more than 100 employees. When they say 100 employees, they are talking about how many people are on your payroll as of November 5th, 2021, regardless of full-time or part-time status or how many worksites you have. Minor employees count toward this 100-employee threshold as do remote workers. State and local governments in Michigan are also subject to the rule.

There is separate [Guidance](#) for federal contractors and healthcare entities who receive payments from Medicare or Medicaid. Those rules supersede the OSHA ETS rules.

When does this rule take effect?

The rule takes effect November 5, 2021 upon publication in the Federal Register. It requires that covered employers either verify vaccination status or start weekly testing of employees by January 4, 2022.

What if employment counts fluctuate...how does that apply?

If you have over 100 employees as of November 5, 2021, this rule applies to you for the duration of the rule (until it is cancelled) regardless of if you drop below 100 employees in the future. If you have fewer than 100 employees as of November 5, 2021, this rule does not apply to you until such time that your employee count exceeds 100.

What counts as “fully vaccinated”?

An employee is considered fully vaccinated after two doses of the Moderna or Pfizer vaccine or one dose of Johnson & Johnson vaccine. There are no booster shot requirements under this rule.

Are there mandated leave policies?

Yes. The rule requires up to 4 hours of paid leave for each shot. This mandated leave benefit cannot be charged against existing leave available to employees. Further, paid leave must be provided to employees for recovery from side effects, but that can be deducted from existing paid leave benefits.

Do I need to verify and retain vaccination status records?

Yes, the rule requires employers to collect, maintain and be able to produce vaccination status of vaccinated employees upon the request of OSHA. Verbal confirmation of vaccination status is not considered compliant. The standard vaccination card is acceptable as verification. Employers are not required to verify the information on that card.

What about the employees who choose not to be vaccinated?

Employees who are not fully vaccinated by January 4, 2022 are subject to two requirements: weekly testing for in-person work and wearing a face covering over the mouth and nose when working indoors or in a vehicle with another employee.

Are there exceptions to this mask requirement?

ADA accommodations must still be made for employees who qualify. Additionally, here is the language from OSHA on further exceptions to the face covering rule:

“The employer must ensure that each employee who is not fully vaccinated wears a face covering when indoors and when occupying a vehicle with another person for work purposes, except:

1. When an employee is alone in a room with floor to ceiling walls and a closed door.
2. For a limited time while the employee is eating or drinking at the workplace or for identification purposes in compliance with safety and security requirements.
3. When an employee is wearing a respirator or facemask.
4. Where the employer can show that the use of face coverings is infeasible or creates a greater hazard that would excuse compliance with this paragraph (e.g., when it is important to see the employee’s mouth for reasons related to their job duties, when the work requires the use of the employee’s uncovered mouth, or when the use of a face covering presents a risk of serious injury or death to the employee).”

How often are tests required?

The employee must have a negative test no older than 7 days old when in person work is being performed. Waiting for a test result is not considered to meet the standard.

Is the employer required to provide leave time for testing or to pay for the costs of test?

No, the employer is not obligated to provide leave time or cover the cost of testing.

Is testing required of remote workers?

No, testing is only required for in-person work. However, if a remote worker does attend the office occasionally, the rule requires them to produce a negative test that is no older than 7 days old before that in-person work is performed.

What if an employee has had COVID previously?

If the employee has had COVID in the previous 90 days and has produced proof of that infection, the testing requirement is lifted for 90 days from the date of the positive test. Employees with COVID infections more than 90 days ago or those who cannot produce documentation of a positive test are still subject to the testing rule.

Do employers have to maintain negative test records?

Yes, under the rule, an employer must keep records showing the negative test result just as the rule requires vaccination status records to be maintained.

Do self-administered over-the-counter tests count?

Yes, but only if supervised (and confirmed) by a medical professional or taken in the presence of a representative of the employer.

What if about employees with medical or religious exemptions...do they still need to be tested and must they wear face coverings?

Yes, the rule generally requires those employees with exemptions to both be tested and wear a face covering. Some employees may have accommodations from face coverings under the Americans with Disabilities Act (ADA).

Some states are banning vaccine mandates – what does this mean, how is it reconciled with the new order?

The rule tries to assert that it supersedes state and local laws. That assertion and most other aspects of this rule will very likely be vigorously challenged in court.

Are employers obligated to educate employees, develop policies and otherwise maintain records on this new rule?

Yes. There are employee education and notification requirements, as well as policy development and record keeping requirements. Further guides and templates will be forthcoming, but in the meantime, additional information can be found here:

[COVID-19 Vaccination and Testing ETS \(osha.gov\)](https://www.osha.gov/covid-19/vaccination-testing-ets)

and here:

[COVID-19 Vaccination and Testing ETS – Frequently Asked Questions | Occupational Safety and Health Administration \(osha.gov\)](https://www.osha.gov/covid-19/vaccination-testing-ets-frequently-asked-questions)