

# OSHA'S COVID-19 EMERGENCY TEMPORARY STANDARD

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COUNTY OF AROOSTOOK

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# OSHA COVID-19 EMERGENCY TEMPORARY STANDARD

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- Originally started with an effective date of November 5<sup>th</sup>, 2021. Deadlines of December 6, 2021, for policy, vaccination roster, masking for unvaccinated staff and January 4, 2022 deadline for testing.
- This went to the courts and OSHA suspended activities related to implementation and enforcement of the ETS pending future developments in litigation.
- On December 27<sup>th</sup>, 2021, the U.S. Court of Appeals for the Sixth Circuit dissolved the Fifth Circuit's stay of Vaccination and Testing Emergency Temporary Standard. This allowed OSHA to implement the workplace health standard and begin exercising enforcement discretion with respect to the compliance dates of the ETS.
- New Dates – OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10, 2022 and will not issue citations for noncompliance with the standard's testing requirement before February 9, 2022, as long as the employer is exercising reasonable, good faith efforts to come into compliance with the standard.
- The final outcome of the ETS is still up in the air because the Sixth Circuit's decision to lift the stay has been appealed to the Supreme Court. So, once again, the final outcome of this is still unknown at this point. However, legal counsel has encouraged employers to proceed with making plans for the implementation of the requirements in their workplaces given the approaching enforcement deadlines listed above.

# COVID-19 ETS

## WHO IS COVERED?

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- Private employers with 100 or more employees on a company-wide basis are covered. And in states with OSHA-approved State Plans (Maine is one) state and local government public sector employers with 100 or more employees are also covered. This includes state, county, local governments and public sector schools.
- This means that we are a covered employer and that we ultimately fall under the State of Maine OSHA plan – Board of Occupational Safety & Health (BOSH). BOSH is having a special meeting on January 18<sup>th</sup> and has stated that at this meeting, they are expected to adopt an emergency rule effective immediately, as well as begin the regular process to adopt a permanent rule.

# OSHA COVID-19 ETS

## WHAT DO WE NEED TO DO?

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- Develop a policy. The ETS has given a choice –
  - Option 1 – Mandatory Vaccination for all employees (subject to exceptions)
  - Option 2 – Vaccination or Weekly Testing/Masking (subject to exceptions)
- Determine vaccination status of each employee, obtain acceptable proof of vaccination status from vaccinated staff, maintain records of each employee's vaccination status and maintain a roster of each employee's vaccination status.

# OSHA COVID-19 ETS

## WHAT TO DO?

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- Provide employees reasonable time, including up to four hours of paid time, to receive each primary vaccination dose and reasonable time and paid sick time to recover from any side effects experienced following each primary vaccination dose.
- Ensure that each employee who is not fully vaccinated is tested for COVID-19 at least weekly (if in the workplace at least once per week) or within 7 days before returning to work (if away from the workplace for a week or longer).

# OSHA COVID-19 ETS

## WHAT TO DO?

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- Require employees to provide prompt notice when they receive a positive COVID-19 test or are diagnosed with COVID-19.
- Immediately remove the employee from the workplace, regardless of vaccination status, when an employee has tested positive and keep the employee out of the workplace until return to work criteria are met.

# COVID-19 ETS WHAT TO DO?

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- Ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes, except in certain limited circumstances (private office, outside, etc.)
- Provide employees with information, about the requirements of the ETS and workplace policies and procedures established in the ETS as well as vaccine efficacy, safety and the benefits of being vaccinated by providing certain CDC documentation.
- Report work-related COVID-19 fatalities to OSHA within 8 hours and work-related hospitalizations within 24 hours.

# COVID-19 ETS

## WHAT HAVE WE DONE SO FAR?

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- Emailed a vaccination survey to all staff members on December 28<sup>th</sup>, asking them to complete the survey and if vaccinated provide proof of vaccination. These surveys and proof of vaccination have been sent directly to HR and will be filed confidentially. The deadline set for completion of this is January 4<sup>th</sup>, 2022.
- Completed a draft policy to be reviewed by the Board of County Commissioners. The policy is a vaccination and testing/masking policy. It allows employees the choice to be vaccinated or not. If you are not vaccinated, you must adhere to the weekly test requirements and 100% masking while at work. However, the policy also states that all employees regardless of vaccination status must wear a mask while at work.

# COVID-19 ETS

## WHAT IS LEFT TO DO?

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- Approval of the policy by the Board.
- Provide the required education documentation to all staff as required by the ETS.

# COVID-19 ETS OUTSTANDING ITEMS TO DISCUSS...

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- Approval of policy
  - Board meets on 1/4/2022
  - Testing plan is still being worked on. Waiting for information from Occupational Healthcare Providers.
  - Accommodations. We should treat medical and religious accommodations as we normally do. If an accommodation is requested by an employee we would conduct our normal interactive approach and reach a decision based on that meeting and information.
- BOSH meeting on January 18<sup>th</sup>
  - Since the State of Maine has a State Plan and we fall under that plan I think it is necessary that we consider waiting on a full implementation of this policy until we hear what BOSH decides at their meeting. BOSH must at least follow the minimum federal OSHA guidelines. I have been informed that no answers will be provided until the meeting.
- Supreme Court ruling.
  - A level of uncertainty falls with this unknown – what will the Supreme Court do with this appeal? We are still in limbo until we know what the Court decides.