

# THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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## ENFORCEMENT OF OSHA COVID-19 MANDATE SET TO BEGIN JANUARY 10

On Friday, December 17, 2021, the Sixth Circuit Court of Appeals issued a decision allowing OSHA to enforce its COVID-19 vaccination mandate for employers with 100 or more employees. This decision reverses an earlier ruling from the Fifth Circuit Court of Appeals which created a nationwide stay on the enforcement of the mandate. The Sixth Circuit found that OSHA has “demonstrated the pervasive danger that COVID-19 poses to workers—unvaccinated workers in particular—in their workplaces.” Prior to issuing its decision, the Sixth Circuit was awarded jurisdiction over all the cases challenging the mandate nationwide—this means the next stop for those attempting to stop the implementation of the mandate will be the United States Supreme Court.

The Department of Labor quickly responded to this decision announcing that it will begin enforcement imminently. Specifically, OSHA will begin enforcing the following requirements for applicable employers on **January 10th**:

- Establish an official vaccination policy. This policy needs to be in writing and include specified data elements. OSHA has issued a [model policy](#) to aid employers.
- Determine vaccination status of each employee, obtain acceptable proof of vaccination, and maintain records and a roster of employee vaccination status.
- Give each employee, in a language and at a literacy level the employee understands:
  1. The requirements of the new standard and the specific policies and procedures the company has adopted to implement the federal requirements.
  2. The CDC document [“Key Things to Know About COVID-19 Vaccines”](#)
  3. Information about [protection against retaliation and discrimination](#).
  4. [Information about the criminal penalties for knowingly supplying false statements or documentation](#).
- Provide employees with four hours of paid leave to get their first and/or second vaccine doses.



- Require employees to promptly provide notice of positive COVID-19 test or COVID-19 diagnosis to the employer.
- Remove any employee who receives a positive COVID-19 test or COVID-19 diagnosis from the physical workplace (employees who test positive may continue to work remotely).
- Ensure employees who are not fully vaccinated wear face coverings when indoors or when occupying a vehicle with another person for work purposes.
- Report work-related COVID-19 fatalities to OSHA within 8 hours and work-related COVID-19 in-patient hospitalizations within 24 hours.
- Make certain vaccination-related records and policies available to employees, their representatives, and OSHA upon request.

OSHA's statement further provides that it will not issue citations for non-compliance with the weekly testing requirements until **February 9th**, "so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard." The rules require covered employers to:

- Ensure employees who are not fully vaccinated are tested for COVID-19 at least weekly (if in the workplace at least once a week) or within 7 days before returning to work (if away from the workplace for a week or longer).
- Record each COVID-19 test result that each employee provides and keep the results of tests they have conducted.

As a reminder, OSHA has significant penalty authority. The penalty for an OSHA violation is \$13,653 for each violation, and the penalty for a willful or repeated violation is \$136,532 per violation. We will continue to carefully monitor developments related to this mandate and update you as additional information becomes available.

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