

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

Stay Tuned as OSHA's Vax-Or-Test Rule Will Soon Be Finalized

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On October 12, 2021, the United States Occupational Safety and Health Administration (OSHA) sent its highly anticipated emergency temporary standard (ETS), also known as the COVID-19 "vax-or-test rule," to the White House for final review, fulfilling an announcement made by President Biden in September.

The ETS, which will apply to employers with 100 or more employees firm- or company-wide, is expected to be published in the Federal Register within the next several days as the Office of Management and Budget announced on Monday, November 1 that it had completed its regulatory review of the ETS. It is anticipated that the ETS will provide options for compliance that will permit employers to decide to either mandate vaccination for all employees (except those with a legally protected exemption) or require unvaccinated employees to have weekly testing.

According to details released on October 28, 2021, employees who can be vaccinated but instead choose the testing option can be required to pay for their tests, while employees who demonstrate a legally protected reason precluding vaccination, such as a medical condition or a sincerely held religious belief, can anticipate that their employer will be required to cover the cost of testing. In addition, the ETS will require employers to provide paid time off for workers to get vaccinated and paid sick leave for employees to recover from any side effects associated with receiving the COVID-19 vaccine. Finally, regardless of the reason for remaining unvaccinated, the released details indicate that the rule will require all unvaccinated employees to wear masks indoors and when in close contact with coworkers.

OSHA is expected to provide employers with a reasonable time to develop, implement, and enforce policies to comply with the upcoming rule. Once the enforcement period begins, employer fines for noncompliance could cost as much as \$14,000.00 per violation.

The vax-or-test rule dovetails with OSHA's recent guidance on mitigating and preventing the spread of COVID-19 in the workplace, which focuses on assisting employers in identifying exposure risks and preventing infection.

If you have questions about this anticipated OSHA rule or any other employment-related matter, please call [Connie Carrigan](mailto:ccarrigan@smithdebnamlaw.com) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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