

---

# New OSHA Rule Regarding COVID-19 Vaccination Requirements for Employers with 100 or More Employees

BLOG | NOVEMBER 4, 2021

On November 5, 2021, the Occupational Safety and Health Administration (OSHA), a sub-agency of the United States Department of Labor (DOL), published a new rule regarding COVID-19 vaccination requirements for large employers (100 or more employees) within the Federal Register.

In summary, this new rule requires companies with 100 or more employees to develop, implement and enforce mandatory COVID-19 vaccination policies for all employees. Employees that refuse to be vaccinated must be tested on a weekly basis for COVID-19 as well as wear a face mask at work at all times. This rule takes effect November 5, 2021, and these plans must be implemented by January 4, 2022.

**This rule, titled “COVID-19 Vaccination and Testing; Emergency Temporary Standard,” includes the following features:**

- By January 4, 2022, employers must implement plans to ensure that that workers are fully vaccinated against COVID-19, and if any employees opt to remain unvaccinated, that they are being tested weekly and wearing face masks.
- Employers must provide paid time off for COVID-19 vaccinations, and must pay workers for any sick time due to the side effects of the vaccine.
- Employers do not need to pay for unvaccinated employees’ weekly testing, only to ensure that weekly testing is taking place.
- These rules do not apply to healthcare providers, which have more stringent rules promulgated by the Center for Medicare and Medicaid Services (CMS).
- Penalties for non-enforcement could include fines up to \$13,653 per serious violation. Willful violations of the rule, i.e. employers who fully disregard the mandate, could result in fines as high as \$136,532 for the employer.

## **NC Department of Labor Response**

In general, OSHA rules are administered either by OSHA directly or through an OSHA-approved state plan, in which each participating state administers OSHA requirements through state agencies. Participating state agencies are required to have regulations and enforcement mechanisms that are at least as effective (ALAE), as the corresponding

Federal OSHA regulatory and enforcement mechanisms. North Carolina has an OSHA-approved state plan which is administered by the North Carolina Department of Labor (NCDOL).

The result of this regulatory scheme is that in North Carolina's case, OSHA requirements are administered by the North Carolina Department of Labor.

On November 4, 2021, Labor Commissioner Josh Dobson released a statement which, while encouraging employees to seek COVID-19 vaccinations, expressed concerns that the use of the state's OSHA resources to enforce this employer vaccination requirement. Commissioner Dobson argued that this requirement would strain DOL resources without additional funding or compliance officers, and may exacerbate the state's labor shortage through employee resignations.

Federal rules require the NCDOL to respond to OSHA rulemaking with NCDOL's planned adoption strategy within 15 days of the rule's passage. Commissioner Dobson's statement noted that the NCDOL is currently weighing its own response. Commissioner Dobson's statement also cited already-filed legal challenges to this OSHA rule, which may impact the rule's eventual effect. In some cases, state Attorneys General have already challenged this rule in Federal courts, hoping for a court to issue a Temporary Restraining Order (TRO) before the rule can be implemented, thus freezing the rule's implementation. The outcome of these legal challenges remains uncertain.

#### **Action Items for North Carolina Employers**

While the outcome of this legal battle is yet to be seen, large employers should immediately begin to develop plans for the implementation of the new OSHA rules by the January 4, 2022 deadline so as not to risk noncompliance and penalties. Young Moore provides legal advice to employers throughout North Carolina regarding COVID-19 policies, and is prepared to advise large employers on the successful creation and implementation of OSHA-compliant vaccine plans.

---

For more information on creating an OSHA-compliant vaccine plan, please contact a member of our Employment Team.

---

#### ***Related Links:***

- [COVID-19 Vaccination and Testing ETS – Frequently Asked Questions](#)
- [Fact Sheet – COVID-19 Vaccination and Testing ETS](#)
- [Summary – COVID-19 Vaccination and Testing ETS](#)
- [Coronavirus \(COVID-19\) Resource Center](#)

---

#### **CONTACT US**

Phone: 919-782-6860

#### **OFFICE**

Young Moore and Henderson, P.A.

#### **MAILING ADDRESS**

Young Moore and Henderson, P.A.

Fax: 919-782-6753

3101 Glenwood Ave. Suite 200  
Raleigh, N.C. 27612

P.O. Box 31627  
Raleigh, N.C. 27622-1627