

## Minnesota OSHA Adopts Federal OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard

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On January 3, 2022, Minnesota's Occupational Safety and Health Administration (MNOSHA) [adopted](#) the federal Occupational Safety and Health Administration's (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) [published](#) on November 5, 2021. The ETS applies to [large employers](#) (i.e., employers with 100 or more employees) and requires, among other things, that covered employers develop, implement, and enforce mandatory COVID-19 vaccination policies, with an exception for employers that adopt policies requiring employees to be vaccinated or undergo regular COVID-19 testing and wear face coverings at work in lieu of vaccination.

[MNOSHA also adopted](#) federal OSHA's ETS [enforcement guidance](#). Following federal OSHA's timeline, MNOSHA will exercise enforcement discretion and not issue citations for noncompliance with any ETS requirements until January 10, 2022, and "it will not issue citations for the testing requirements until February 9, 2022, so long as businesses are making 'good faith' efforts to implement the rules."

Minnesota's adoption of the ETS comes on the eve of oral argument before the Supreme Court of the United States on January 7, 2022, regarding whether a stay of enforcement of the ETS should be in place. The Supreme Court's consideration of the issue follows an appeal of the U.S. Court of Appeals for the Sixth Circuit's decision on December 17, 2021, [dissolving](#) the Fifth Circuit's earlier decision staying enforcement of the ETS.

Employers may want to take steps to comply with the ETS and, at minimum, be in position to show "good faith" efforts to implement the rules to avoid potential citations coming out of this period of enforcement discretion and pending further action by the Supreme Court.

We will monitor the Supreme Court's consideration of these issues and provide additional guidance once a decision is issued.

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