

Impact of Recent OSHA and CDC Updates on Employers' Mandatory Vaccination Policies

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Now that OSHA has withdrawn its vaccine or test rule, many employers are considering the use of mandatory vaccination policies in their workplaces. Employers have met this development with varied responses – some employers have rescinded vaccination requirements that were compliant with the more stringent OSHA Emergency Temporary Standard (“ETS”) requirements, some have retained mandatory vaccination policies compliant with the now-withdrawn ETS, and still others have created mandatory vaccination policies without reference to the ETS.

At the same time, to add to the ever-changing landscape, the CDC recently published [updated definitions](#) to determine when someone’s vaccination status is, in their terms, “up to date.” For those who received the Pfizer-BioNTech and Moderna vaccines, an individual is currently considered “fully vaccinated” two weeks after the final dose in the primary series of two doses, given three and four weeks apart respectively. An individual is considered “up to date” immediately upon receiving their booster shot. For those who received Johnson & Johnson’s Janssen vaccine, an individual is considered “fully vaccinated” two weeks after the first dose, and “up to date” immediately upon receiving their booster shot.

Next Steps for Employers

Employers must continue to assess their vaccination policies. They must weigh certain factors such as workplace safety and public health considerations along with company culture, employee recruiting and retention concerns, and industry trends. They must also consider the existence of laws that may prohibit them from implementing a mandatory vaccination policy (e.g., in Alabama, Arkansas, Florida, Iowa, Kansas, Montana, North Dakota, Tennessee, Texas, Utah, and West Virginia), and those that require their implementation: New York City.

For those that are continuing to implement a vaccination policy in some form, additional consideration should be given to whether to utilize the CDC’s new “up to date” concept. Employers should also consider whether their policies should be constructed such that they will automatically update as the CDC continues to update its vaccination recommendations.

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