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The New Federal COVID-19 Requirements for Employers With 100+ Employees Have Finally Arrived

OSHA issued the long-awaited ETS requiring employers with 100 or more employees to mandate that employees either get the COVID-19 vaccine or undergo weekly COVID-19 testing. The Spencer Fane Labor and Employment Attorneys are analyzing the ETS and will be providing a more in-depth client alert shortly, in addition to hosting an educational WorkSmarts™ webinar on Wednesday, November 10 from 2:00pm-3:00pm CT. In the meantime, here are a few highlights:

- The ETS requires employers to obtain information about the vaccination status of each employee and obtain proof of vaccination.
- The ETS requires employers to provide up to four hours of paid time to receive the primary vaccine dose and reasonable time and paid sick leave to recover from any side effects.
- The ETS requires unvaccinated employees to wear a face covering when indoors or in a vehicle with another person while working.
- The ETS does not extend to remote employees or employees working outdoors.
- The ETS does not require employers to pay for the weekly testing (but employers may still need to consider whether the FLSA and/or state law require them to cover testing costs).

Employers must comply with most of the provisions within 30 days from publication of the ETS in the Federal Registrar. Employers have 60 days from publication in the Federal Registrar to comply with the testing requirements. The ETS is scheduled to be published in the Federal Registrar tomorrow (November 5, 2021), which would mean that covered employers must implement most of the ETS requirements by December 5, 2021. We anticipate the ETS will likely be subject to legal challenge.

Additional information can be found at the OSHA website here.

This client alert was prepared by Elizabeth Wente, a partner in the Spencer Fane Springfield office. For more information, please visit www.spencerfane.com.