

# OSHA Emergency Temporary Standard Impact on Vermont Municipal Employers

December 20, 2021



December 20, 2021. On November 5, The Occupational Safety and Health Administration (OSHA) issued its [COVID-19 Vaccination and Testing Emergency Temporary Standard \(ETS\)](#). Legal challenges to the ETS were resolved on December 17, when a stay in the U.S. Court of Appeals, Fifth Circuit, was overturned in the Sixth Circuit. Covered employers, therefore, must continue to plan to comply with the ETS.

## **This OSHA ETS requires covered employers to:**

- Develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead establish, implement, and enforce a policy allowing employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and wear a face covering at the workplace.

- Provide time off for employees to get vaccinated.
- Implement notification protocols and removal protocols for employees who get COVID-19.
- Maintain vaccination records.

VLCT and PACIF both anticipate that the ETS will apply to both private and public employers in Vermont. This is because Vermont has a state plan which extends OSHA requirements to public sector employers. The Vermont Occupational Safety and Health Administration (VOSHA) must issue its own rule within 30 days. This rule may be more expansive than the OSHA ETS, but is not expected to be.

Therefore, **municipalities should keep the following highlights in mind:**

- This ETS will apply to municipal employers with more than 100 employees in places, like Vermont, with an adopted state plan (VOSHA) that extends occupational safety and health regulations to also cover public sector employers. ([OSHA COVID-19 Vaccination and Testing ETS FAQs](#) Question 2.E).
- Vermont is required to amend VOSHA and adopt regulations so that its safety and health protections “are at least as effective” as the Federal ETS. It’s unclear if the Vermont adoption process could delay the effective date of any requirements. In fact, VOSHA could establish its own effective dates. ([OSHA FAQs](#) Question 1.C). VLCT expects to learn more from VOSHA in early January.
- Employers covered by the ETS will need to be ready to implement certain requirements quite soon. To account for uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA has indicated it will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’s testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.

- Both part-time and seasonal employees count towards the employee count (100) in most instances. However, the ETS only applies if you have 100 employees on staff today or if you bring on board 100 employees while the ETS is in effect. So the fact that you had 100 total staff last summer doesn't mean you need to follow the ETS today if they have since left your payroll (according to the [OSHA FAQs](#) Questions 2.A.8 and 2.C).

### Resources:

- [OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard](#)
- [OSHA's Summary of this ETS](#)
- [OSHA's FAQs about this ETS](#)
- [OSHA's Resource Page about this ETS](#), including vaccination, testing, and face covering requirement templates
- [The National League of Cities Blog Post about this ETS](#)
- [VLCT's FAQs about this ETS](#) – *posted 12/7/21*
- [VLCT's Guidance on Vaccine Mandates](#) (has not been updated to reflect the OSHA ETS)

VLCT will continue to monitor this situation and provide additional information as soon as possible.

PACIF members dealing with issues related to vaccine mandates, as with other employment situations, may access the Human Resources Consultation Program. If your municipality encounters circumstances that need legal guidance, such as the need to accommodate an employee for medical or other reasons, please contact Jill Muhr, Senior Human Resources Consultant, to discuss the situation and whether it qualifies for the Employment Practices Liability (EPL) Referral Program. The EPL Referral program provides PACIF members with a certain amount of free, targeted legal assistance with employment matters. Jill may be reached at [jmuhr@vlct.org](mailto:jmuhr@vlct.org) or via her direct office number, 802-262-1923.