

**BENTON COMMUNITY SCHOOL DISTRICT
EMPLOYEE COVID-19 VACCINATION/TESTING REQUIREMENTS**

BOARD POLICY

The Occupational Safety and Health Administration (“OSHA”) has released an emergency temporary standard (“ETS”) that will obligate employers with 100 or more employees to require employees to be fully vaccinated against COVID-19 or, for any employees who are not fully vaccinated, to undergo weekly COVID-19 testing and to wear a mask in the workplace. In an effort to comply with the OSHA ETS, the District has put in place requirements, as outlined in this policy.

This policy is effective immediately upon Board approval and remains in effect during such time as OSHA is permitted by law and pursuant to applicable court rulings to enforce the ETS. If at any point OSHA is prohibited from enforcing the ETS, the requirements under this policy will not be in effect.

DEFINITIONS

- “Covered Employee” is an employee of a covered employer who does *not* qualify for any of the following exceptions:
 - a) The employee does not report to a workplace where other individuals such as coworkers or customers are present;
 - b) The employee exclusively works from home; or
 - c) The employee exclusively works outdoors.

The employer shall have the final determination as to whether an employee qualifies as a covered employee.

- “Covered Employer” is an employer with 100 or more employees at any time the ETS is in effect.
- “COVID-19” is the disease caused by SARS-CoV2 (severe acute respiratory syndrome coronavirus 2).
- “COVID-19 test” is a test for COVID-19 that must include the following:
 - a) Is cleared, approved or authorized, including in an Emergency Use Authorization (EUA), by the FDA to detect current infection with COVID-19 (e.g., a viral test);
 - b) Is administered in accordance with the authorized instructions; and
 - c) Is not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor.

Examples of tests that satisfy this requirement include tests with specimens that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by an employer.

- “Face covering” means a covering that must include the following:
 - a) Completely covers the wearer’s nose and mouth;
 - b) Is made with two or more layers of breathable fabric that is tightly woven (i.e., the fabric does not let light pass through when held up to a light source);
 - c) Is secured to the head with ties, ear loops, or elastic bands that go behind the head (if gaiters are worn, they should have two layers of fabric or be folded to make two layers);
 - d) Fits snugly over the nose, mouth, and chin with no large gaps on the outside of the face; and
 - e) Is a solid piece of material without slits, exhalation valves, visible holes, punctures, or other openings.

This definition includes clear face coverings or cloth face coverings with a clear plastic panel that, despite the non-cloth material allowing light to pass through, otherwise meet this definition and which may be used to facilitate communication with people who are deaf or hard-of-hearing or others who need to see a speaker’s mouth or facial expressions to understand speech or sign language respectively. The employer shall have the final authority on whether any particular item qualifies as a “face covering” pursuant to this policy.

- “Facemask” means a surgical, medical produce, dental, or other isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy.
- “Fully vaccinated” means at least two weeks have passed since an individual has received both primary doses of a two-dose COVID-19 vaccine (i.e., Pfizer or Moderna) in accordance with the minimum recommended interval between doses OR has received the only primary dose of a single-dose COVID-19 vaccine (i.e., Johnson & Johnson). Whether or not an employee has received a “booster shot” is not considered in determining whether an individual is fully vaccinated.
- “Proof of vaccination” includes the following:
 - a) The record of immunization from a healthcare provider or pharmacy;
 - b) A copy of the COVID-19 Vaccination Record Card;

- c) A copy of medical records documenting the vaccination;
- d) A copy of immunization records from a public health, state, or tribal immunization information system, or
- e) A copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).

An employee may produce a physical or digital copy of the employee's proof of vaccination.

If an employee is unable to produce acceptable proof of vaccination, the employee may produce a signed and dated statement that attests to the employee's vaccination status and that they have lost or otherwise are unable to produce proof of vaccination as required by the policy and the law. An employee needing to complete this statement should contact Melody Spence, Central Office Director and Human Resources, mspence@benton.k12.ia.us Ext. 1505.

- "Workplace" is a physical location that can be either fixed or mobile where the covered employer's work or operations are performed. It can include a vehicle or any other enclosed space. Workplace does not include an employee's residence.

GENERAL REQUIREMENTS

Effective January 10, 2022, all covered employees must meet one of the following requirements:

- 1) Be fully vaccinated, or
- 2) If not fully vaccinated for any reason, wear a face covering at work at all times unless otherwise outlined in this policy.

Effective February 9, 2022, all covered employees must meet one of the following requirements:

- 1) Be fully vaccinated, or
- 2) If not fully vaccinated for any reason, do both of the following:
 - a) Provide proof of a weekly COVID-19 test, and
 - b) Wear a face covering at work at all times unless otherwise outlined in this policy.

It is the policy of the District that no employee, contractor, customer, or agent of the employer shall discriminate, harass, or retaliate against an individual due to the individual's actual or perceived vaccination status or for reporting concerns pursuant to this policy. If an individual believes such discrimination, harassment, or retaliation has occurred, the individual should report that conduct pursuant to the employer's complaint policies.

A. Determination of Employee Vaccination Status

The OSHA ETS requires that a covered employer determine whether each of its covered employees is fully vaccinated. Therefore, if a covered employee wishes to be considered fully vaccinated, such that the covered employee will not have to follow the requirements in place for an unvaccinated covered employee (to wear a face covering and test weekly for COVID-19), the covered employee should provide proof of vaccination.

A covered employee should provide proof of vaccination to Melody Spence in Central Office no later than **January 10, 2022**. A covered employee may provide a physical copy or digital copy (i.e., a photograph or scanned copy) of proof of vaccination.

If a covered employee fails to provide proof of vaccination prior to January 10, 2022, the covered employee will be presumed to be unvaccinated and must comply with the “Requirements for Employees who are Not Fully Vaccinated” outlined in this policy, including wearing a face covering at work and testing for COVID-19, until such time when the covered employee provides proof of vaccination.

A covered employee hired during the effective date of this policy should provide proof of vaccination consistent with this policy no later than seven (7) days after their date of hire. Until such time as a newly hired covered employee provides proof of vaccination, the covered employee must comply with the “Requirements for Employees who are Not Fully Vaccinated” outlined in this policy.

B. Requirements for Employees Who are Not Fully Vaccinated

If a covered employee is not fully vaccinated (including a covered employee who is presumed to not be fully vaccinated because the covered employee has not provided the requisite proof of vaccination), the covered employee is required to take the following action:

- 1) Beginning January 10, 2022, the covered employee shall wear a face covering at all times while in the workplace *unless* one of the following situations exist¹:
 - a) The covered employee is alone in a room with floor to ceiling walls and a closed door;
 - b) The covered employee is eating or drinking for a limited period of time at the workplace;

¹ A covered employee who has received both primary doses of a of a two-dose COVID-19 vaccine (i.e., Pfizer or Moderna) in accordance with the minimum recommended interval between doses prior to January 10, 2022, but who has not yet passed the two-week waiting period to be considered fully vaccinated, is not required to wear a face covering in the workplace as outlined in this policy.

- c) It is necessary for the covered employee to remove the covered employee's face covering for a limited period of time to comply with safety or security requirements; or
- d) When the covered employee is wearing a respirator or facemask.

The employer shall be responsible for the cost of any face coverings. Face coverings shall be replaced when wet, soiled, or damaged. A face shield may be worn in addition to a face covering, but not lieu of a face covering.

Nothing in this policy shall be construed to prohibit or otherwise prevent any employee from wearing a face covering unless such face covering would create a hazard of serious injury or death.

- 2) Beginning February 9, 2022, the covered employee shall receive and submit to the employer a COVID-19 test at least once every seven (7) days.²

EMPLOYER ARRANGED TEST: The covered employee shall provide written proof of a COVID-19 test that includes the date of the COVID-19 test and the outcome of the COVID-19 test (either positive or negative for COVID-19) each week. Employer will facilitate the required COVID-19 test on Monday's as outlined in a schedule to be made available to all employees each week at no cost to the covered employee.

If the covered employee is absent from work on the day the covered employee is scheduled to receive the COVID-19 test, the covered employee shall make arrangements with the employer to ensure the covered employee provides proof of a COVID-19 test at the beginning of the covered employee's next shift. If the day the covered employee is scheduled to receive the COVID-19 test falls on a holiday, the employer will arrange to have the employee receive the COVID-19 test the workday either immediately prior to or immediately following the holiday.

These policies shall apply to all covered employees who are not fully vaccinated including if a covered employee does not become fully vaccinated due to health, disability, and/or religious reasons. If a covered employee is unable to comply with the "Requirements for Employees who are Not Fully Vaccinated" for a disability or religious reason, the covered employee should contact Melody Spence, Central Office Director and Human Resources at Ext. 1505 or mspence@benton.k12.ia.us to discuss if a reasonable accommodation is available.

² A covered employee who has received a positive COVID-19 test or a COVID-19 diagnosis by a licensed healthcare provider is not required to produce another test result for 90 days from the date of the test result/diagnosis.

If the covered employee fails or otherwise refuses to wear a face-covering or to provide a COVID-19 test as required by this policy, the employee shall be immediately removed from the workplace and subject to discipline up to and including termination.

C. Notification of Positive COVID-19 Test and/or COVID-19 Diagnosis

All employees are required to promptly notify the District, specifically Melody Spence in Central Office if at any time the employee receives a positive COVID-19 test or a COVID-19 diagnosis by a licensed healthcare provider. This requirement applies to all employees of the District, including those employees who do not qualify as covered employees.

If an employee receives a positive COVID-19 test or a COVID-19 diagnosis by a licensed healthcare provider, the District shall immediately remove that employee from the workplace. The employee shall not return to the workplace until the employee has met one of the following requirements:

- 1) Receives a negative result on a COVID-19 nucleic acid amplification test (NAAT) following a positive result on a COVID-19 antigen test if the employee chooses to seek a NAAT test for confirmatory testing;
- 2) Meets the return-to-work criteria in the CDC's "Isolation Guidance" information; or
- 3) Receives a recommendation to return to work from a licensed healthcare provider.

The District may, in its discretion, elect to keep an employee out for a longer period of time if such is required under the District's policy regarding quarantine/isolation and/or state and/or federal public health guidance.

D. Allowable Exemptions/Accommodations for Covered Employees

This policy does not require covered employees to receive a COVID-19 vaccine. As such, it is not necessary for the District to provide medical/disability or religious exemptions from a COVID-19 vaccine requirement. If a covered employee does not become fully vaccinated from COVID-19 due to a disability, health, or religious reason, the covered employee must comply with the "Requirements for Employees who are Not Fully Vaccinated" outlined in this policy.

If a covered employee is unable to comply with the "Requirements for Employees who are Not Fully Vaccinated" due to the covered employee's disability or the covered employee's sincerely held religious belief, the covered employee should contact Melody Spence in Central Office at Ext. 1505 or mspence@benton.k12.ia.us to discuss if a reasonable accommodation is available.

EMPLOYER SUPPORT FOR EMPLOYEE VACCINATION

It is the District's intent to provide a reasonable amount of time for each employee to obtain each of the employee's primary COVID-19 vaccine doses. The District will provide up to four (4) hours of paid leave ("vaccination leave")³ to obtain either of the primary doses of the COVID-19 vaccine (i.e. four (4) hours per dose). This includes time the employee spends traveling to/from and obtaining the COVID-19 vaccine. If these activities take less than four (4) hours, the employee must return to work immediately. In rare instances when these activities take more than four (4) hours, an employee may use other accrued paid leave or, if no paid leave is available, the District will provide any necessary additional leave beyond the four hours as unpaid leave.

The District will also provide each employee with reasonable time and paid leave to recover from side effects experienced following any primary vaccine dose. An employee shall be required to use their accrued PTO/sick leave to recover from side effects experienced if such time is available. If such time is not available, the District will provide up to two (2) days of paid leave for the employee to recover from side effects experienced following any primary vaccine dose.

Under no circumstances will the District or any employee of the District interfere with an employee's vaccination leave nor will the District or any employee of the District retaliate against an employee for taking vaccination leave.

RECORD KEEPING AND REPORTING

The District's custodian of confidential medical records will maintain a roster of each covered employee's vaccination status, a record of each covered employee's proof of vaccination, and a record of each COVID-19 test result for any covered employee. These records are confidential medical records and will be maintained in the covered employee's confidential medical file. These records will not be produced to anyone unless required or authorized by state or federal law. These records will be maintained at least for the duration of the OSHA ETS or as otherwise required by state or federal law.

If an employee wishes to examine and/or copy their own medical records regarding proof of COVID-19 vaccination or COVID-19 test results, the employee should make such request to the District's custodian of confidential medical records, and the District shall provide those records to the employee by the end of the next business day of the request being made.

³ The District will not deduct vaccination leave from the employee's other accrued leave that is provided as an employment benefit. Instead, this vaccination leave is in addition to any other paid leave available to the employee.

Additionally, the District shall, upon request by any employee, make available the aggregate number of fully vaccinated employees and the total number of employees at the workplace. The District must provide this information within one (1) business day of the employee's request. If an employee seeks this information, the employee should contact the District's custodian of confidential medical records.

The District shall report the following information to OSHA:

- 1) Any work-related COVID-19 fatality within eight (8) hours of the employer learning about the fatality; and
- 2) Any work-related COVID-19 in-patient hospitalization within twenty-four (24) hours of the employer learning about the in-patient hospitalization.

The District shall, upon request, provide the following information to the Assistant Secretary of Labor of Occupational Safety and Health or their designee:

- 1) A copy of this policy within four (4) business hours of the request being made;
- 2) The aggregate number of fully vaccinated employees and the total number of employees at the workplace within four (4) business hours of the request being made; and
- 3) All other records and supporting documentation related to this policy by the end of the next business day of the request being made.

INFORMATION FOR EMPLOYEES

The District shall provide each employee with the following information in the employee's language and at the employee's literacy level:

- 1) A copy of this policy that include the requirements of OSHA'S ETS; and
- 2) The "Key Things to Know About Covid-19 Vaccines" documents provided by the Centers for Disease Control ("CDC"), which is attached to this policy and also available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>.

The District is expressly prohibited from discriminating or retaliating against an employee for reporting a work-related fatality, injury, or illness, including filing a complaint with the Occupational Safety and Health Administration. The District is further prohibited from discriminating or retaliating against an employee for exercising the employee's rights under this policy.

Any employee who fails to follow the requirements of this policy may be subject to discipline up to and including termination. Any employee who knowingly makes any false statement, representation, or certification as part of the requirements of this policy may be subject to criminal penalties pursuant to the Occupational Safety and Health Act.

If at any time an employee has questions about this information, the employee should contact Dr. Pamela Ewell, Superintendent, Ext. 1503.