OSHA ETS-compliant COVID-19 Vaccination Policy

NOTE TO EMPLOYER: The following sample policy is designed to help employers address employee vaccination and vaccination status related to the COVID-19 pandemic and OSHA's Emergency Temporary Standard (ETS), issued November 5. This sample should be modified to fit the needs of the organization.

Following the release of OSHA's Emergency Temporary Standard for private-sector employers, the CMS requirements for medical professionals and caregivers, and the Safer Federal Workforce Taskforce's guidelines for federal employers and contractors, employers may wish to update vaccination, PTO, or sick leave policies to be compliant with the requirements set forth by those organizations. Businesses and employers must determine their own vaccination policies and how to administer them for employees and visitors in compliance with all applicable laws. OSHA's ETS preempts state laws that are less protective to the employee; however, employers should still be aware of any state or local laws that prohibit mandating vaccination, testing, or vaccination passports. Employers should also consider ADA, FMLA, FLSA, and HIPAA when making decisions related to vaccination requirements. The ETS also requires employers to keep accurate and current vaccination and testing records for all employees, and it is recommended to keep that information in a confidential location.

While side effects of the vaccination are not OSHA recordable, through May 2022, fatalities and hospitalizations due to COVID must be reported to OSHA. It is advised that employers work to accommodate employees if they experience any effects related to receiving the vaccine.

State- and location-specific policies are recommended.

Policy <EFFECTIVE NO LATER THAN 12/5/21>

XYZ Company takes pride in providing an environment free of known hazards for our <EMPLOYEES, CUSTOMERS, VISITORS, PATIENTS, ETC.>. In response to the growing number of COVID-19 cases, the rapid spread of the virus and variants, as well as the potential risks to those exposed to the virus, *XYZ Company* is implementing the following vaccination policy for all <EMPLOYEES, CUSTOMERS, VISITORS, PATIENTS, ETC.>, except those reporting to a workplace where no other individuals are ever present, those employees working exclusively from home, and employees working exclusively outdoors. All employees must read the Centers for Disease Control and Prevention's "Key Things to Know About COVID Vaccines," which is attached to this policy.

All <EMPLOYEES, CUSTOMERS, VISITORS, PATIENTS, ETC.> of <COMPANY OR LOCATION/DIVISION/ETC.> are covered by this policy and are required to be fully vaccinated no later than January 4, 2022. To be considered fully vaccinated, at least 2 weeks must have passed since completing the primary vaccination series with a COVID-19 vaccine. This includes 2 weeks following the second dose in a two-dose series of the *Pfizer* or *Moderna* vaccines; 2 weeks following a single-dose vaccine, such as *Johnson & Johnson* vaccine; or 2 weeks following the second dose of any combination of two doses of different vaccinations as part of the primary vaccination series.

All <EMPLOYEES, CUSTOMERS, VISITORS, PATIENTS, ETC.> are required to also comply with the company's associated safety policies, including those recommended by the CDC to minimize the risks of exposure and/or spread of COVID-19. Employees who travel as part of their job responsibilities may be required to abide by policies at other worksites.

<INCLUDE COVID-RELATED SAFETY POLICIES HERE, E.G., SOCIAL DISTANCING.>

This sample document is only an example and is based on the laws in effect at the time it was written. MRA - The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation.

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Reporting Vaccination Status

As of <DATE/PRIOR TO 1/4/22>, all <EMPLOYEES, VISITORS, CAREGIVERS, VOLUNTEERS, CONTRACTORS, ETC.> are required to report their vaccination status and provide proof of vaccination directly to Human Resources. Employees are expected to report truthful and accurate information about their COVID-19 vaccination status, and, if applicable, their testing results. Acceptable proof of vaccination status should include the employee's name, type of vaccination administered, the dates of vaccination, and the name of the health care professional or clinic that administered the vaccine, and can be any of the following:

1. The record of immunization from a health care provider or pharmacy
2. A copy of the COVID-19 Vaccination Record Card
3. A copy of medical records documenting the vaccination
4. A copy of immunization records from a public health, state, or tribal immunization information system
5. 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).

If an employee is unable to provide any of the indicated forms of vaccination verification, the employee can provide a signed and dated statement attesting to their vaccination status (fully or partially vaccinated) and that they have lost or are unable to produce one of the other forms of acceptable proof, and include the following language:

> "I declare that this statement about my vaccination status is true and accurate. I understand that knowingly providing false information regarding my vaccination status on this form may subject me to criminal penalties."

Vaccination Support

To help employees receive the required vaccination, *XYZ Company* will consider advance requests for schedule changes or time off to obtain the vaccination. In addition, *XYZ Company* will reimburse employees for the cost, if any, of receiving the vaccination, with submission of the appropriate supporting documentation.

Paid Time for Vaccination and Recovery

Employees may be entitled to up to 4 hours of paid time, per dose, to travel to the vaccination site, receive a vaccination, and return to work. These hours are not counted toward the calculation of overtime. Up to 2 days may be taken by an employee experiencing side effects related to the COVID-19 vaccination that prevent them from working.

(Choose the option that best fits your company's policy.)

A. Employees must use already available <PTO OR SICK PAY, NOT VACATION > benefits for this 2-day absence period. If <PTO OR SICK PAY> is not available, the time will be paid by XYZ Company. Additional time may be granted, if necessary, but will be unpaid or require the use of available <PTO OR SICK PAY>.
B. This time is paid by XYZ Company and will not be taken from an employee's available <PTO OR SICK PAY>.
   Additional time may be granted, if necessary, but will be unpaid or require the use of available <PTO OR SICK PAY>.

Exemption Requests

<EMPLOYEES, CUSTOMERS, VISITORS, PATIENTS, ETC.> may request an exception from this policy if the vaccine is medically contraindicated for them or if medical necessity requires a delay in being vaccinated. Employees may also be entitled to a reasonable accommodation if they cannot be vaccinated or wear a face covering due to a disability, or a sincerely held religious belief, practice, or observance. Requests for exemptions and reasonable accommodations must be initiated by the employee or legally appointed representative, and will be handled in accordance with applicable laws, regulations, and *XYZ Company* policies. Exemption requests must be made directly to Human Resources.

COVID-19 Notification and Removal From the Workplace

Employees are required to notify their immediate supervisor and Human Resources Department at *XYZ Company* immediately following receipt of a positive COVID-19 test or following a diagnosis by a licensed health care provider. Employees diagnosed with COVID-19 will be immediately removed from the workplace and required to quarantine according to current CDC and/or local public health agency guidelines. Employees are prohibited from returning to the workplace without prior written authorization from Human Resources. Any employee experiencing symptoms consistent with COVID-19 should be tested for the virus, whether or not that employee has been fully or partially vaccinated. Employees experiencing symptoms should immediately seek guidance from their immediate supervisor or the Human Resources Department. Employees experiencing symptoms may be required to quarantine.

Return to Work Following a Confirmed Positive COVID-19 Test

Employees who test positive will not be required to retest for a period of 90 calendar days. Employees must meet all of the following criteria before returning to the workplace*:*

- Receive 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
- Meet the return-to-work criteria in CDC's "Isolation Guidance"
- Receive a recommendation to return to work from a licensed health care provider
- Receive written authorization from Human Resources prior to returning to the workplace.

Testing Requirements

A. Employees who are not fully vaccinated and report to the workplace at least once every 7 days will be required to:

<OR>

B. Out of an abundance of caution, all employees, regardless of vaccination status, who report to the workplace are required to test for COVID-19 as follows:

    - Test for COVID-19 at least once every 7 calendar days. Test results must be verified in writing by an authorized medical professional.
    - Provide documentation of the most recent COVID-19 test result to Human Resources no later than 7 days from the most recent test result.
    - Provide a negative test result prior to returning from an absence longer than 7 days. This test must be dated within the 72 hours prior to the return.

Test results must be verified in writing by an authorized medical professional. Self-administered tests must be proctored <BY AN AUTHORIZED MEDICAL PROFESSIONAL OR COMPANY DESIGNEE>.

Employees who fail to provide test results within the designated time frame will be immediately removed from the workplace, without pay (unless pay is required by local or state law or company policy), until test results are provided. Failure to comply with this portion of the policy may result in disciplinary action and absences may be subject to discipline in accordance with *XYZ Company's* attendance policy.

The cost of testing for COVID-19 <*WILL, WILL NOT* > be the responsibility of *XYZ Company.* Time taken for testing will be paid in accordance with state and federal wage and hour laws.

Face Covering Requirements

Face coverings may be worn by any employee of *XYZ Company,* regardless of vaccination status. Face coverings are required to be worn by employees who have not provided proof of being fully vaccinated and in settings required by the CDC, in accordance with this policy. The following are exceptions to face mask requirements:

1. When an employee is alone in a room with floor-to-ceiling walls and a closed door.
2. For a limited time, while an employee is eating or drinking at the workplace or for identification purposes in compliance with safety and security requirements.

3. When an employee is wearing a respirator.
4. Where *XYZ Company* has determined that the use of face coverings is infeasible or creates a greater hazard (e.g., when it is important to see the employee's mouth for reasons related to their job duties, when the work requires the use of the employee's uncovered mouth, or when the use of a face covering presents a risk of serious injury or death to the employee).

Face coverings may be made of a variety of materials but must be secured in such a way as to cover both mouth and nose. Face coverings may not have any cuts that create a break in the surface area from nose to mouth. Face coverings are provided by the <EMPLOYEE OR COMPANY>. Appropriate face coverings will be provided by the company, as needed, to allow for interaction with employees <AND CUSTOMERS> with hearing impairments. Face covering patterns must comply with the existing Company dress code.

New Hires

This policy is shared with prospective employees upon an offer of employment. All new employees are required to comply with the vaccination requirements outlined in this policy upon hire. Any new hire that is not fully vaccinated may have the start date delayed until such a date that he or she is considered fully vaccinated, or the offer may be rescinded. Accommodation requests may be submitted to Human Resources prior to the first day of employment and will be considered in accordance with *XYZ Company* policies.

Confidentiality

XYZ Company is committed to protecting the confidentiality of employee information. All medical information collected from individuals, including vaccination information, test results, and other information obtained as a result of providing test or vaccination information, will be treated in accordance with applicable laws and policies.

Contract or Subcontract Employees

XYZ Company may place employees at locations that are considered government contractors or subcontractors. Any employee working at such a location will be expected to comply with the requirements of that work site. *XYZ Company* will make every effort to provide continuous employment for any employee requesting an exception to this policy; however, we cannot guarantee that each request can be accommodated, based on work requirements and business needs.

Failure to comply with this policy is subject to discipline, up to and including termination of employment.

***NOTE TO EMPLOYERS**: Because this area is constantly evolving, MRA advises organizations to review this policy with legal counsel for its defensibility under the law. Employers should only consider information on vaccination status that has been provided by the employee and not attained through other sources. Companies with an organized labor presence are advised to consult with union leadership prior to enforcing any policies that may conflict with the current contract.*