

	OSHA ETS	Task Force Guidance	CMS Regulation
Overall Policy	Vaccination or weekly COVID-19 testing required for workplaces not covered by the Fed Contractor EO or CMS regulation.	Vaccination required for covered contractor employees, those working at covered workplaces, and employees of affiliates working at covered workplaces.	All eligible staff who work at health care facilities that participate in the Medicare and Medicaid programs must obtain a COVID-19 vaccine.
Compliance Deadline	Compliance with weekly testing requirement begins January 4, 2022 for any employees who have not received their entire primary vaccination series. Compliance with all other requirements begins December 6, 2021. See FAQs 12.A. and 12.B.	Necessary shots to be fully vaccinated completed for applicable personnel by January 4, 2022; deadline for full vaccination of January 18, 2022.	Necessary shots to be fully vaccinated completed for applicable personnel by January 4, 2021. Covered facilities have until December 6, 2021, to establish a policy ensuring all eligible staff have received the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine prior to providing any care, treatment, or other services
Impact of Compliance Deadline	Non-compliance after deadlines could result in OSHA citations and penalties. While compliance dates could change depending on outcome of pending litigation (likely determined by deciding court), covered employers should work toward compliance by current dates.	Per the Task Force's FAQs : "Covered contractors are expected to comply with all requirements set forth in their contract. Where covered contractors are working in good faith and encounter challenges with compliance with COVID-19 workplace safety protocols, the agency contracting officer should work with them to address these challenges. If a covered contractor is not taking steps to comply, significant actions, such as termination of the contract, should be taken." Other risks of non-compliance include False Claims Act exposure.	CMS will monitor compliance with these requirements using existing survey and enforcement processes. If a health care facility does not abide by the requirements, it will be given a warning and have an opportunity to bring itself into compliance before additional actions occur. While CMS emphasized that its goal is to have all health care providers comply, it stated it will deploy its full enforcement authority as needed to achieve that goal.
Scope of Coverage	US wide : all employees not covered by the Federal Contractor EO or CMS regulation who work in a state covered by Federal OSHA jurisdiction, excluding employees who work from home, do not report to a worksite where other individuals are present, or who work exclusively outdoors. States not covered by the Fed ETS have 30 days to adopt the Federal ETS or an equivalent standard. Accordingly, employees in all states will eventually be covered, though specific requirements could differ depending on the state.	Employees who: Work on, i.e. directly service, the covered contract(s); Work in connection, i.e. indirectly service the covered contract(s) (e.g., HR, billing, legal); and Work in the buildings of those mentioned above (including employees of affiliates).	The Rule applies to all eligible staff who work for Medicare-and Medicaid-certified providers and suppliers. The Rule provides a list of providers it directly regulates, which can be found in the background section of the regulation .
Recordkeeping	Must maintain a roster of each employee's vaccination status, but vaccinated and unvaccinated. Must also preserve acceptable proof of vaccination for each employee who is fully or partially vaccinated.	Covered employees are required to show or provide proof of vaccination to their employer. It is prudent to maintain a roster or other record in order to demonstrate compliance and limit enforcement/litigation risk.	Covered facilities must track and securely maintain the required documentation of staff COVID-19 vaccination status. Vaccine exemption requests and outcomes must also be documented. Examples of appropriate places for vaccine documentation include a facilities immunization record, health information files, or other relevant documents. Examples of acceptable forms of proof of vaccination include: (1) CDC COVID-19 vaccination record card (or a legible photo of the card), (2) Documentation of vaccination from a health care provider or (3) electronic health record, or (4) State immunization information system record.
Mask Mandate	If fully vaccinated, the ETS does not require masking. If not fully vaccinated, yes when indoors or in a vehicle with another person for work purposes, subject to limited exceptions.	Anchored to CDC guidelines: If vaccinated, employees must wear a mask in indoor settings in areas of high or substantial community transmission. If not fully vaccinated, must wear a mask indoors and in certain outdoor settings regardless of the level of community transmission.	The Rule refers to the ETS issued in June, which requires indoor masking unless fully vaccinated and in in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present.
Physical Distancing Required?	No.	If fully vaccinated, no physical distancing required. If not fully vaccinated, individuals must maintain a distance of six feet from others at all times to the extent practicable.	The Rule refers to the ETS issued in June, which requires physical distancing unless fully vaccinated and in a well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present.
Onsite vaccinations required?	No	No	No. But, the employer can bring vaccination providers onsite to vaccinate staff.
Applicable to remote employees?	No	Yes, if the employees are working on or in connection with a covered contract. Remote employees are not subject to masking and distancing requirements.	No.

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Applicable to outdoor work?	<p>No if exclusively outdoors. In order to qualify as work performed exclusively outdoors, the following criteria must be met:</p> <ul style="list-style-type: none"> The employee must work outdoors on all days (i.e., an employee who works indoors on some days and outdoors on other days would not be exempt from the requirements of this ETS). The employee must not routinely occupy vehicles with other employees as part of work duties (i.e., do not drive to worksites together in a company vehicle). The employee works outdoors for the duration of every workday except for de minimis use of indoor spaces where other individuals may be present – such as a multi-stall bathroom or an administrative office – as long as the time spent indoors is brief, or occurs exclusively in the employee’s home (e.g., a lunch break at home). <p>See FAQ 2.B.</p>	Yes.	N/A
Reasonable Accommodation?	<p>Under federal law, including ADA and Title VII, workers may be entitled to a reasonable accommodation because of a disability or a sincerely held religious belief, practice or observance.</p> <p>See the EEOC’s regulations, guidance, and technical assistance for additional information.</p>	Yes, reasonable accommodations for disability (including medical) or sincerely held religious belief, practice, or observation. Employees entitled to such accommodation for vaccination are still subject to mask and testing requirement (however, employee could also be entitled to reasonable accommodation for mask and/or testing).	Religious beliefs, observances, or practices, may provide grounds for exemption. Providers and suppliers must have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, the facility’s decision on the request, and any accommodations that are provided.
Impact on States	<p>21 states and Puerto Rico have their own, federally-approved workplace safety/health programs that apply to private employers. The remaining states, i.e., those without their own plans, are immediately subject to the Federal ETS.</p> <p>State-plan states and Puerto Rico need to adopt the Federal ETS or an equivalent standard with 30 days. In the interim, employers have no compliance obligations under the Federal ETS, as Federal OSHA does not have enforcement authority in state-plan states. Litigation regarding Federal OSHA’s ETS could alter the 30-day deadline.</p> <p>The ETS “preempt[s] inconsistent state and local requirements relating to these issues, including requirements that ban or limit employers’ authority to require vaccination, face covering, or testing, regardless of the number of employees.”</p>	<p>Coverage under EO is based on contracts, not geography, so the state location is not relevant to compliance. Federal OSHA ETS does not apply to worksites covered by the EO.</p> <p>Task Force FAQs provide that the Guidance “supersedes any contrary State or local law or ordinance.”</p>	Coverage under the CMS Rule is based on contracts, not geography, so the State location is not relevant to compliance. However, the Rule expressly preempts the applicability of any State or local law providing for exemptions to the extent such law provides broader exemptions than provided for by Federal law and are inconsistent with Rule.

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Key Abbreviations Used in this Document

OSHA ETS	Occupational Safety and Health Administration COVID-19 Vaccination and Testing Emergency Temporary Standard
Task Force Guidance	Safer Federal Workforce Task Force, COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
CMS Regulation	Centers for Medicare & Medicaid Services, Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination