

## COMMON VACCINE FAQs – CAL-OSHA ETS

### Can we require employees to get vaccinated?

Yes, subject to the requirement to reasonably accommodate employees who are not able to get vaccinated due to disability to religious beliefs. Employers should also be able to articulate how the vaccination is job-related and consistent with business necessity. Employers are advised to discuss with legal counsel before establishing a mandatory vaccination policy.

### Can we ask employees about their vaccination status?

Yes, employers may inquire about vaccination status. However, employers should instruct employees not to disclose any additional medical or other information and must maintain any information as confidential. Covered employers must also provide notice pursuant to the California Consumer Privacy Act (CCPA).

### Should employers ask for “proof” of vaccination status?


The revised Cal-OSHA ETS define “fully vaccinated” as the employer has *documentation* showing the person received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine. What qualifies as sufficient documentation (e.g., signed acknowledgment form, copy of vaccination card, etc.) has not been further defined as of this time. For now, California’s updated guidance for privacy venues and events may offer some insight, listing the following as acceptable methods of proof of full vaccination: vaccination card (including name, type of vaccine, and date last dose administered), photo of vaccination card as separate document to as stored on electronic device, or documentation from a healthcare provider.

### What if an employee declines or refuses to disclose their vaccination status?

Remind the employee of the legitimate business-related reasons for the inquiry but proceed with caution before disciplining or taking any other adverse action, even if there is a mandatory vaccination policy. Even with a mandatory vaccination policy, you must ensure that you have a process in place to address issues of reasonable accommodation with employees prior to moving to discipline or any adverse action. You should also consider whether reprimanding an employee for declining to disclose their vaccination status could be viewed as a *per se* mandatory vaccination policy, which requires an accommodation analysis in the event the employee cannot get the vaccine for disability or religious reasons.

### What if a fully vaccinated employee wants to quarantine after a workplace exposure?

Engage in a dialogue to determine why the employee wants to quarantine. If the employee can work remotely during this period, you may consider this as an accommodation. If remote work is not available, the employee is likely not entitled to exclusion pay under the Cal-OSHA ETS or paid time off under California’s COVID-19 Supplemental Paid Sick Leave or ARPA, as under the



revised Cal-OSHA ETS, fully-vaccinated employees who do not have COVID-19 symptoms need not be excluded from the workplace.

**May we disclose the vaccination status of the workforce?**

An employee's individual vaccination status is confidential medical information that must be protected and may not be disclosed. However, a general statement of the estimated percentage of vaccinated employees may be acceptable.

**What should we do if clients or customers demand they receive service from only vaccinated employees?**

Remind employees that, if asked about vaccination status, they should not disclose such information. A possible response may include: "We cannot disclose any individual's particular vaccination status, but as the company has indicated, 80% of our staff have been vaccinated. Coupled with our safety measures, that should provide reassurance that we are taking necessary steps to ensure a safe environment."

**What safety measures can be adjusted now that employees are vaccinated? Can we relax masking requirements?**

Under the revised Cal-OSHA ETS, physical distancing requirements only apply prior to July 31, 2021. Additionally, if all employees at the worksite are fully-vaccinated, except for employees who require a reasonable accommodation or exception to vaccination, are exempt from physical distancing requirements.

The updated ETS also excludes from the face covering requirement where all employees are fully vaccinated and do not have COVID-19 symptoms, employees wearing respirators, and employees who are fully vaccinated when they are outdoors and do not have any COVID-19 symptoms.

**May we require employees who are unvaccinated to submit to regular COVID-19 tests?**

The revised Cal-OSHA ETS note that, starting July 31, 2021, employers shall make COVID-19 testing available at no cost to employees with COVID-19 symptoms who are not fully vaccinated, during employees' paid time. This distinction is limited to employees with COVID-19 symptoms and current guidance from federal OSHA notes employees should not be treated differently based on vaccination status in terms of workplace safety precautions. At a minimum, be consistent in applying policies, reasonably accommodate employees who may decline or not be able to get tested or vaccinated due to medical or religious reasons and take steps to safeguard the confidentiality of test results and vaccination status (e.g., conduct tests in private, not single out unvaccinated employees, etc.).