



# Vaccine Mandates, Exemptions, and Accommodations

What Employers Should Know About COVID-19 Immunization  
Mandates and Challenges, and How to Navigate Employee  
Requests Regarding Vaccination

April 2022

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# Contents

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**Introduction ..... 4**

**OSHA Emergency Temporary Standards, the  
Supreme Court Ruling, and the CMS Mandate ..... 5**

**How Are Different States Responding  
to Federal Vaccine Mandates? ..... 6**

**Clinical and ADA Consideration Around  
Vaccination and Exemptions ..... 7**

**Religious and Medical Exemptions ..... 8**

**A Complex and Changing Need ..... 10**

**Abbreviations ..... 11**

**References ..... 11**



# Introduction

COVID-19 has become an ongoing challenge for employers seeking to manage a productive workforce while setting policies that keep workers safe. The availability of effective vaccines in the US provided some relief and protection for employees’ health but created new issues that employers must navigate when considering absence requests and accommodations. Faced with conflicting legislation regarding vaccine mandates, along with employees asking for vaccine exemptions and related accommodations, the leave landscape has never been more difficult to navigate.

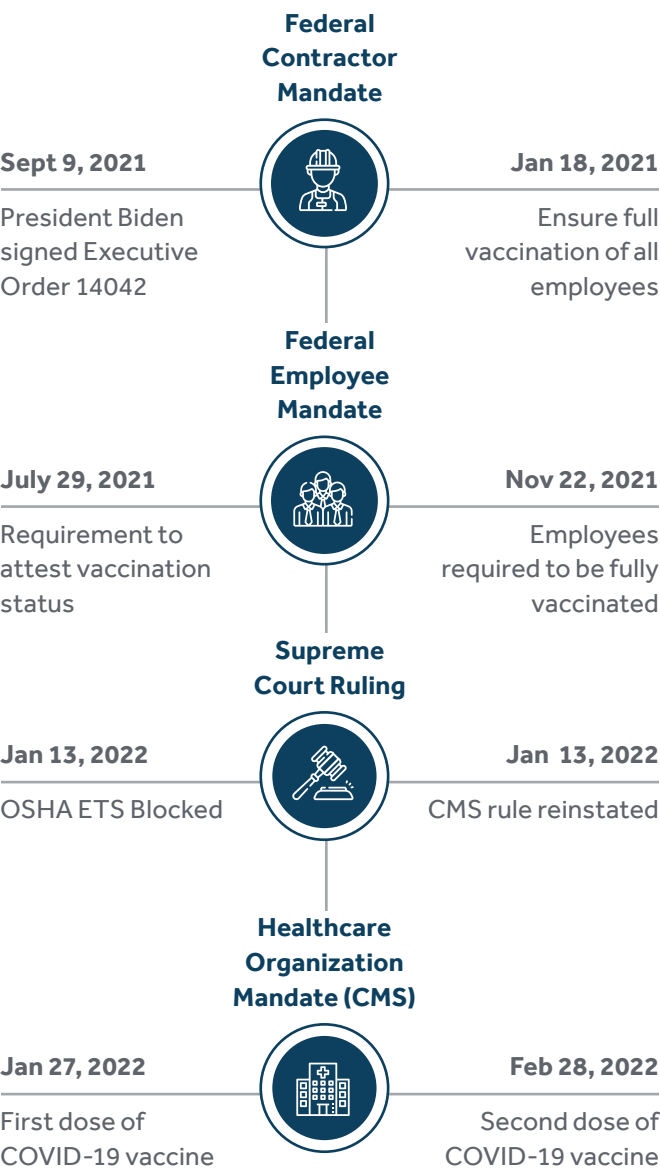
This paper provides an overview of federal and state vaccine mandates as well as guidance on how to manage related requests for accommodations including medical, religious, and “others”, with a focus on best practices and compliance considerations. The document covers:

- 1 Federal vaccine mandates and employer considerations
- 2 Best practices and compliance guardrails under OSHA Emergency Temporary Standards
- 3 Clinical implications for medical exemptions and accommodations
- 4 Review of current federal and state vaccine mandates, and the impact they are having on employers



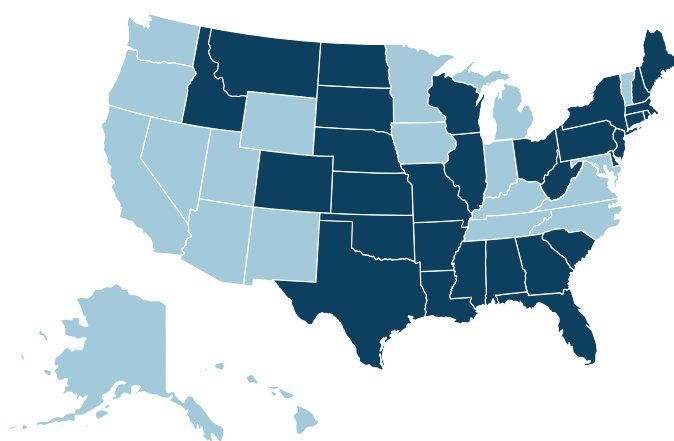
## Timeline: Federal Vaccine Mandates and Regulations

Since the beginning of the pandemic, various federal mandates have been imposed due to changing nature of the COVID-19 surge. Mandates intended to protect workers have been challenged in court; those challenges have been partially successful. The timeline below summarizes the background of Federal vaccine mandates and regulations:



# OSHA Emergency Temporary Standards, the Supreme Court Ruling, and the CMS Mandate

## States & OSHA'S ETS



● States Covered by Federal OSHA

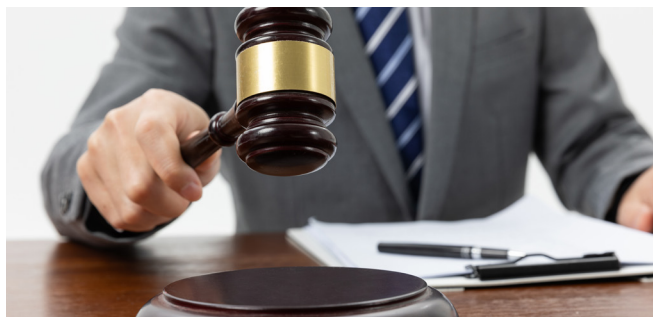
● States Covered by State Plans

The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) requiring that **private employers** with 100+ employees must require their employees get vaccinated against COVID-19. The ETS directed employers to include temporary workers, seasonal workers, and minors as covered employees in the vaccine policies. Under the ETS, all employees including new hires, current employees, and temporary employees would have had to provide proof of vaccination. Among the details of the mandate:

- Unvaccinated employees were required to undergo mandatory weekly testing, observe social distancing, and wear a mask at all times in the workplace
- Employers were required to offer paid leave to employees to receive the vaccine and time off to recover from any side effects experienced after getting the vaccine

This mandate, originally scheduled to go into effect January 10, 2022, was overturned by the Supreme Court ruling on January 13.

The Supreme Court's ruling allowed the CMS mandate, requiring 10.4 million healthcare workers to be vaccinated against COVID-19, to go into effect, while blocking the OSHA rule that would have required 84.2 million employees of large employers to be either vaccinated or masked and tested weekly. Under the ruling, the Centers for Medicare and Medicaid Services (CMS) is authorized to enforce requirements necessary to protect those receiving services in institutions as a necessary step to promote and protect patient health safety in the face of ongoing pandemic. Certified providers and suppliers must meet the compliance deadlines in order to continue receiving Medicare and Medicaid funding from DHHS.



Given the Supreme Court's decisions, healthcare employers who receive Medicare or Medicaid funding should ensure the policies regarding vaccine mandates and exemptions are being implemented to meet the CMS deadlines as outlined above.

Although OSHA withdrew the vaccination and testing ETS as an enforceable emergency temporary standard, effective on January 26, 2022, the agency is keeping the ETS as a proposed rule. OSHA continues to strongly encourage vaccination of workers against the dangers posed by COVID-19 in the workplace.

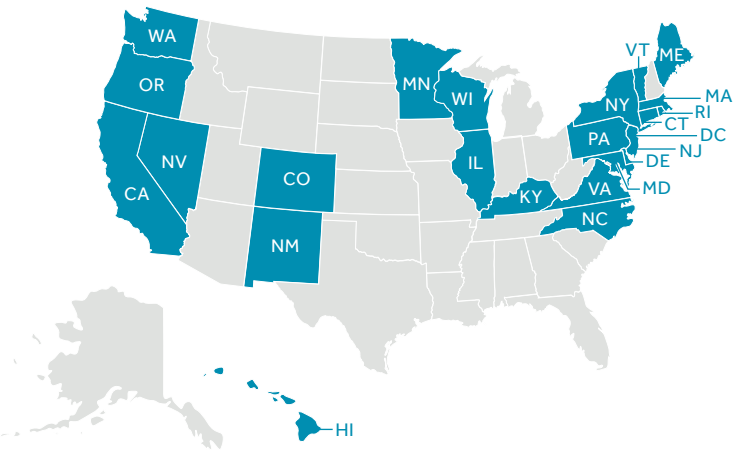
The block on OSHA's ETS may encourage more states to pass additional legislation to protect workers from COVID-19 in the workplace. Employers can also choose to implement their own workplace regulations in order to protect their employees; however, employers do need to be aware of state-level mandates and seek legal counsel before implementing additional workplace restrictions, mandates, or requirements.

# How Are Different States Responding to Federal Vaccine Mandates?

Multiple states have passed or are considering legislation regarding vaccine mandates, testing requirements, and vaccination leave, including paid leave for its implementation.

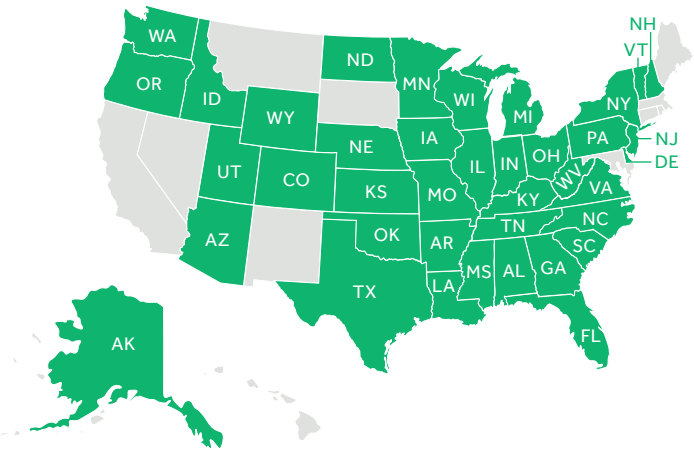


## States Vaccine Mandates & Laws



● States with laws creating vaccine mandates or related legislation

## States Laws Prohibiting Vaccine Mandates



● States with laws that prohibit vaccine mandates or provide additional exceptions to vaccine mandates

In addition to ongoing legal challenges against federal mandates, multiple states passed or are considering legislation regarding prohibitions on vaccine mandates, robust vaccine exemptions, testing exemptions, and even monetary penalties for "coercion".

# Clinical and ADA Consideration Around Vaccination and Exemptions

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As employers navigate return-to-work and the array of state & federal laws regarding vaccination, questions related to vaccine waivers, medical exemptions, and accommodations in the workplace have become more prevalent. These questions (and answers) offer some perspective:

## **Who should be vaccinated against COVID-19, and who is included under vaccine waiver and medical exemptions?**

The [CDC](#) recommends COVID-19 vaccines **for all persons over the age of 5**, including those with underlying medical conditions such as cancer, diabetes, heart conditions, etc. To date, the only contraindications to receiving the COVID-19 vaccine, per the CDC, are for those with a history of anaphylaxis after receiving a previous dose or a known diagnosed allergy to a component of a COVID-19 vaccine. Waiver considerations should include the known allergy component and/or the diagnosed allergy to the component of a COVID-19 vaccine.

Providers may also choose to endorse a waiver due to a medical condition and/or immunosuppressive therapy that would negate or reduce the effects of the vaccine in certain cases, such as chemotherapy or immunosuppressive drugs for rheumatoid arthritis, for example, in those circumstances, the waiver may be temporary.



## **Exemptions and accommodations**

Vaccine exemptions are considered under:

- Medical/Disability Exemption
- Religious Exemption
- Reasonable Accommodations
- EEOC Technical Guidance
- Employer Pitfalls and Solutions

## **Under what circumstances should an employer grant an employee's request for vaccine-related accommodations under the Americans with Disabilities Act (ADA)?**

Employers who receive a reasonable accommodation request from an employee should process the request in accordance with applicable ADA standards. For example, some individuals who are immunocompromised might still need reasonable accommodations because their conditions may mean that the vaccines may not offer them the same measure of protection as other vaccinated individuals.

Common accommodation examples include work from home, flexible work arrangements or schedules, and providing PPE to allow the employee to safely perform job duties.



### **Should employees with a history of prior infection with COVID-19 be granted a vaccination waiver?**

If the employee's medical provider endorsed a vaccine waiver due to previous COVID infection, or presumed immunity negating the need for COVID vaccine, vaccination can occur after recovery from acute illness and after isolation criteria is met. Timing of vaccination for these patients should be determined on a case-by case basis. Additionally, some state laws include prior infection as a valid exemption from vaccination mandates.

### **Can COVID-19 be a disability?**

The ADA's three-part [definition of disability](#) applies to COVID-19 in the same way it applies to other medical conditions. A person can be an individual with a "disability" for purposes of the ADA if they have an "actual" disability, have a "record of" disability, or are "regarded as" an individual with a disability.

Applying the ADA rules and depending on the specific facts involved with an individual employee's condition, a person with COVID-19 may have an actual disability if the person's medical condition or any of its symptoms are a "physical or mental" impairment that "substantially limits one or more major life activities."

For example, an individual may be considered disabled if they have been diagnosed with post-COVID-19-infection symptoms, such as heart palpitations, chest pain, shortness of breath, or related effects, which last for several months.

Appropriate documentation from a healthcare provider should include assessment of the nature of any impairment(s), duration of the need for accommodation, and the extent to which the impairment(s) conflict with the employer's vaccination requirement.

## **Religious and Medical Exemptions**

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The ADA requires covered employers to provide reasonable accommodation to qualified applicants and employees with a disability. Similarly, Title VII of the Civil Rights Act Religious Accommodation states that covered employers have an obligation to accommodate an employees sincerely held religious belief, unless the accommodation creates an undue hardship or threatens the health and safety of others. It can include an employee's religion-based objection to vaccinations.



### **Medical Exemptions and Accommodations**

Medical and disability exemption can be considered under the following three categories as directed by CDC guidance & Medical Considerations:

- Contraindications & prior allergic reactions
- Mental health considerations
- Pregnancy considerations



Determining a reasonable accommodation occurs after the employer and employee engage in the interactive process, which involves the employer working with the employee to understand their request and need for an accommodation. Any accommodation should be based upon the nature of the disability under the ADA, with documentary proof provided by the employee and supported, as necessary, by the employee's medical provider.



## Religious Exceptions

According to the EEOC, "religion" is a broad term that can protect a range of beliefs, practices, and observances that employers may not be aware of. In general, employers should assume that an employee's religious accommodation request is based on a sincerely held religious belief, practice, or observance.

When an employer learns of a situation where a reasonable accommodation may be needed due to a sincerely held religious belief, they should engage in the interactive process. Just as in the case of the ADA interactive process, the objective here is to determine what, if any, accommodations are needed.

The process includes these steps:

- The employee shares information about their circumstances; the nature of the religious belief that they believe justifies an accommodation or exemption; and what they believe are the limitations on getting vaccinated as per the employer's requirements
- The employee provides supporting documentation from a religious leader about the religious belief that conflicts with the employer's vaccination requirement, if available

The employer considers the request and makes a determination. If an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information. The employer can evaluate the accommodation request based on a "sincerely held religious belief by considering these factors: would complying with the vaccination requirement be "markedly inconsistent" with the employee's professed beliefs? Is the accommodation being requested due to secular, not religious, reasons? Does the timing of the request make it suspect? Are there other, more likely reasons why the employee is asking for the accommodation, that are unrelated to the employee's professed religious beliefs? An employer should have a clear rationale for a decision not to accommodate a religious accommodation.

The [Equal Employment Opportunity Commission](#) (EEOC) has provided several resources to provide guidance on issues such as COVID-19 and the ADA, the Rehabilitation Act, other EEO laws, COVID-19 and employment discrimination laws, and how the EEOC is serving the public<sup>1</sup>. These resources can help organizations to comply with the regulations and protect their employees.

<sup>1</sup><https://www.eeoc.gov/>



# A Complex and Changing Need

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As the pandemic continues to affect workers and workplaces, and scientific understanding of COVID-19 continues to evolve, employers should consider the following for complying with the vaccine mandates:

- Have a plan of action that is documented and allows for a consistent and well-managed exemption and accommodation processes.
- Engage in the interactive process and maintain communication with the employee even after implementing the accommodation (if any).
- Work with the employee's medical provider. Get second opinions when needed.
- Maintain documentation of any conversations with employees requesting exemptions or accommodations. Ensure this documentation is kept confidential.



# Abbreviations

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<b>ADA</b>	American with Disabilities Act
<b>CDC</b>	Centers for Disease Control and Prevention
<b>CMS</b>	Centers for Medicare and Medicaid Services
<b>COVID-19</b>	Coronavirus Disease 2019
<b>DHHS</b>	Department of Health and Human Services
<b>EEOC</b>	Equal Employment Opportunity Commission
<b>ETS</b>	Emergency Temporary Standards
<b>OSHA</b>	Occupational Safety and Health Administration

# References

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- 1 [https://www.supremecourt.gov/opinions/21pdf/21a240\\_d18e.pdf](https://www.supremecourt.gov/opinions/21pdf/21a240_d18e.pdf)
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