

Practical Strategies for Manufacturers Managing COVID-19 Testing, Vaccine Mandates

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Manufacturing employers continue to feel the brunt of emerging and evolving trends related to the COVID-19 pandemic: workplace safety, labor shortages, absence management, remote technology, and employee retention — just to name a few. On the workplace safety front, mask mandates, testing protocols, and vaccine issues continue to make headlines, including [President Joe Biden's September 9, 2021, announcement](#) regarding vaccine and testing requirements for companies with 100 or more employees. These developments have all employers looking at strategies for how to comply with an upcoming Emergency Temporary Standard (ETS) for employers with 100 or more employees from the Occupational Safety and Health Administration (OSHA).

For manufacturing employers, there are unique challenges and opportunities for managing their almost entirely non-exempt workforce on-site, often in geographically remote locations, politically charged regions, and across multiple shifts and 24/7 operations.

We continue to await OSHA's promulgation of the standard, which the Secretary of Labor said would occur in a matter of weeks. In the meantime, many manufacturing employers are in a position to tackle policy initiatives and strategies for workplace testing and vaccination requirements, all with an eye on wage and hour compliance, [bargaining obligations](#), and [disability and health management best practices](#).

In preparation for broader COVID-19 testing requirements, what are manufacturing employers doing right now? Some are:

- Partnering with states, like [Tennessee](#), that offer access to COVID-19 testing at the employer's facility (potentially without charge to the employer or the employee);
- Collaborating with states that align with private testing laboratories to provide on-site testing for private employers;
- Surveying employees for their vaccination status to determine the number of COVID-19 tests needed;
- Securing testing kits for employees to use on-site at work;
- Utilizing "vaccination toolkits" offered by states (including [California](#), [Minnesota](#), and [Washington](#)) to facilitate vaccine clinics for businesses on-site or at nearby locales, to maximize vaccination rates, help reduce time away from work related to vaccine access or vaccinated status, and reduce the need for additional testing;
- Preparing processes and manager protocols to verify vaccinations and conduct weekly testing;
- Communicating with employees to prepare for the ETS's requirements; and
- Preparing paid time and paid leave policies for vaccination, vaccination recovery, testing, and medical leave.

Additional strategies to prepare for compliance with the weekly testing requirement for unvaccinated employees contemplated by the upcoming ETS include:

- Preparing to track time for on-site testing or vaccination for non-exempt employees during scheduled shifts;
- Planning on-site or off-site testing options for second- and third-shift workers to test outside of regular business hours;
- Identifying testing resources in order to reduce employee time away from work for testing and awaiting results; and
- Curbing costs for employers and employees who are eligible to participate in state-paid programs.

With respect to on-site testing, it is important to coordinate with legal counsel to:

- Evaluate the requirements of the ETS and any applicable state, federal, and local mandates, particularly requirements to use certain types of testing (*e.g.*, Connecticut's mandate does not permit at-home testing results to satisfy weekly test requirements);
- Decide whether to collect and maintain testing results or require employees to self-report positive results only;
- Determine a strategy to communicate with employees on new requirements and processes, as well as reminders to comply with ongoing weekly testing requirements;
- Ensure protocols are current and Human Resources is ready to respond if an employee tests positive; and
- Create a practical policy of enforcement for employees who fail to comply and ensure managers use it.

If you have questions or need assistance with COVID-19 vaccination or testing policies or with OSHA standards, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [Workplace Safety and Health Practice Group](#) or our [Disability, Leave and Health Management Practice Group](#)

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