



## Insight

# The Costs of the Biden Administration's COVID-19 Mandate Rules

DAN BOSCH, DAN GOLDBECK | NOVEMBER 4, 2021

## EXECUTIVE SUMMARY

- The Biden Administration released two rules requiring certain employers to impose COVID-19 prevention requirements on employees.
- An Emergency Temporary Standard (ETS) from the Occupational Safety and Health Administration applies to most employers with 100 or more employees and will cost an estimated \$3 billion over the six-month period the ETS can remain in effect.
- A vaccination-requirement rule from the Centers for Medicare and Medicaid Services will cost an estimated \$1.4 billion in the rule's first year.

## INTRODUCTION

The Occupational Safety and Health Administration (OSHA) finally rolled out its Emergency Temporary Standard (ETS) mandating employers with 100 or more employees to establish and enforce a policy requiring employees to be vaccinated for COVID-19 or submit to mask-wearing and weekly testing. According to OSHA, the rule covers about 84 million workers – meaning that employers face the potential for high costs in complying with the rule.

This analysis briefly explains employers' requirements under the rule and breaks down OSHA's cost estimate. It also briefly describes the costs associated with a corollary rule from the Centers for Medicare and Medicaid Services (CMS) mandating health care facilities that work with CMS to require vaccination.

## OSHA ETS REQUIREMENTS OF COVERED EMPLOYERS

The [ETS](#) requires employers with 100 or more total employees among all its locations at any time while the ETS is in effect (including part-time workers but excluding independent contractors) to “develop, implement, and enforce” a mandatory COVID-19 vaccination policy or choose to adopt a policy that requires currently unvaccinated employees to get vaccinated or submit to testing at least once per week and wear a face mask. The policy must be in place by January 4, 2022. OSHA settled on a 100-employee threshold because the agency believes employers with that many employees will have the capacity to administer the requirement. OSHA is not requiring smaller employers to implement the standard, though it does ask for comment on whether a requirement would be appropriate for smaller businesses.

Covered employers must develop and implement a policy, provide for accommodations for employees to get vaccination (such as time off for vaccination and recovery), report to OSHA any work-related COVID-19 fatality or hospitalization, and maintain records on employees showing vaccination and testing results.

The rule does not apply to employees that work exclusively outdoors, nor does it apply to federal contractors since they are already required to have a similar policy under previously issued guidelines. It also does not apply to health care workers previously covered by the ETS for health care workers issued earlier this year.

## **OSHA ETS TOTAL COSTS TO EMPLOYERS**

The table below breaks down OSHA's estimate of the costs associated with complying with the ETS. The total comes in at about \$3 billion. Since, by law, an ETS can only last six months, the costs are estimated over that time frame.

<b>Cost Type</b>	<b>Cost (Millions)</b>
Establishing Employer Vaccine Policy	\$149
Secondary Costs of Administering Vaccine (Leave, etc.)	\$1,911
Reporting Fatalities & Hospitalizations	\$4
Test Records Costs	\$604
Vaccine Status Records Costs	\$313
<b>Total Costs</b>	<b>\$2,981</b>

### *Establishing Vaccine Policies*

OSHA estimates that it will take the typical employer a total of six hours and 10 minutes of a management-level employee's time to familiarize themselves with the rule, draft a policy, and distribute the policy to employees. It estimates this cost to be about \$149 million for all employers.

### *Secondary Costs of Administering Vaccine*

OSHA assumes no costs to employers for the vaccination itself, but it does forecast costs for time off for employees to get the vaccine and to recover from any side effects. OSHA assumes that 88 percent of currently unvaccinated workers are employed by businesses that provide paid time off, therefore the cost estimate for this component of \$1.9 billion is derived only from 12 percent of covered workers. OSHA estimates each worker will need about one hour of time off per dose of vaccine.

### *Reporting Fatalities and Hospitalizations*

OSHA estimates it will take a management-level employee 45 minutes to submit each report of a covered fatality or hospitalization for a total cost of about \$4.3 million.

## Test Records Costs and Vaccine Records Costs

While employers do not have to pay for employee testing (OSHA's position is that employees are electing not to get a free vaccination), employers do need to maintain records showing that employees are vaccinated or have been tested weekly. To estimate the cost of this component, OSHA assumes five minutes of a clerical-level employee's time per vaccination or test record, for a total cost of \$313 million for vaccination records and \$603 million for testing records.

## INDUSTRIES WITH HIGHEST COSTS

OSHA estimates the costs of the ETS on 86 separate industries. Nine industries face totals greater than \$100 million. Those industries are presented in the table below.

Industry	Total Cost (Millions)
Educational Services	\$302.1
Performing Arts, Spectator Sports, and Related	\$270.8
Administrative and Support Services	\$216.0
Professional, Scientific, and Technical Services	\$180.0
Animal Production and Aquaculture	\$143.5
Crop Production	\$129.0
Social Assistance	\$126.9
Religious, Grantmaking, Civic, Prof., and Similar Orgs.	\$118.2
Management of Companies and Enterprises	\$110.6

Costs per entity in each industry are not uniform, however. Seven industries face per-entity costs greater than \$50,000, shown below.

Industry	Cost per Entity
Rail Transportation	\$894,389
General Merchandise Stores	\$363,714
Couriers and Messengers	\$86,970
Monetary Authorities	\$74,846
Air Transportation	\$73,790
Performing Arts, Spectator Sports, and Related	\$58,393
Telecommunications	\$54,096

## CMS VACCINATION REQUIREMENT RULE

Released concurrently with OSHA’s ETS, CMS promulgated an [interim final rule](#) with comment period (IFC) implementing a vaccination mandate for all facilities participating in Medicare and Medicaid. Given the scope of those programs, this IFC applies to a large swath of the health care industry. The Biden Administration [estimates](#) it will “cover approximately 17 million healthcare workers across 76,000 healthcare facilities.” The deadline for compliance is the same as the OSHA ETS: January 4, 2022. Crucially, however, in contrast to the OSHA ETS this IFC: A) applies to covered employers of all sizes, not just those with more than 100 employees; and B) implements a straightforward vaccine mandate that does not include such alternative measures as regular testing of those that remain unvaccinated.

In the IFC’s cost-benefit analysis, CMS summarized its potential estimated costs for the first year of the rule in the table below. CMS notes as a caveat, however, that “these efforts overlap in scope, reach, and timing, there is no basis for assigning most of these costs to this rule or any other similar rule.”

Cost Category	Cost (Millions)
Information Collection Costs	\$136
Counseling and Incentive Costs	\$180
Vaccination Costs	\$466
Disruptions to Staffing and Services	\$600
<b>Total Costs</b>	<b>\$1,382</b>

### *Information Collection Costs*

This component involves the time and commensurate costs of filing the proper paperwork to demonstrate compliance with these requirements. CMS estimates that this administrative burden amounts to more than 1.5 million hours of burden at costs of \$136 million.

### *Counseling and Incentive Costs*

CMS estimates the costs incurred by employers that attempt to induce voluntary compliance from otherwise-hesitant staff through such items as educational materials on the vaccine’s safety and effectiveness or additional fringe benefits to staff that elect to get vaccinated. The agency estimates the costs at \$180 million.

### *Vaccination Costs*

These costs, estimated at \$466 million, represent the actual costs of administering the vaccine as well as opportunity costs of the roughly one hour of time it will take the average covered employee to become fully vaccinated.

### *Disruptions to Staffing and Services*

This component refers to the potential hiring costs incurred across the health care industry if the IFC’s

requirements result in the need to hire replacement staff for those employees that quit to avoid the vaccine mandate. CMS estimates the cost at \$600 million, the largest single component of the agency’s cost estimate.

As noted earlier, a key difference in how CMS structured this IFC as compared to OSHA’s ETS is that it establishes a clear-cut vaccine mandate with little in the way of exemptions or carve-outs. For instance, in the discussion of allowing exemptions for previously infected staff, CMS notes that implementing such a framework would involve “complicated administration and likely require standards that do not now exist for reliably measuring the declining levels of antibodies over time in relation to risk of reinfection.” In their decision to not provide the option of “daily or weekly testing of unvaccinated individuals” – something that is a part of the OSHA ETS – CMS states that it “reviewed scientific evidence on testing and found that vaccination is a more effective infection control measure.”

## **CONCLUSION**

OSHA’s ETS for employers with 100 or more employees is expected to cost employers about \$3 billion. OSHA makes no estimate of the costs to employees, who will have to pay any costs associated with testing and mask requirements should they opt out of vaccination. A separate rule requiring vaccinations and covering health care facilities that work with CMS estimates costs about \$1.4 billion. Combined, the two rules impose about \$4.4 billion in costs.