



COMPARISON OF COVID-19 MANDATES

updated 2021-Nov-17

	<i>Federal Contractor Mandate</i>	<i>Federal/MN OSHA ETS Mandate</i>	<i>State of MN (EO1446)</i>	<i>Owner Mandate</i>	<i>Employer Mandate</i>
<i>Effective dates</i>	<p>Mandate will be introduced via federal contract.</p> <p><u>New contracts</u>: Terms incorporated in contracts beginning 14-Nov-2021.</p> <p><u>Amended contracts</u> formed prior to 15-Oct-2021: terms will be included in amendment, order, or extensions/renewals.</p> <p><u>15-Oct to 14 Nov</u>: Optional: include in solicitation & encourage</p> <p>Dates requiring compliance begin Jan 4 or per contract.</p>	<p>Currently stayed by federal courts and not instituted by MN OSHA. Otherwise:</p> <p><u>General</u>: Dec 5 to create policy, create records, etc.</p> <p><u>Vaccinated / Tested</u>: Jan 4 to comply with vaccinated status/testing requirements</p> <p>MN OSHA has said it will adopt the Federal ETS by reference, without change, after the stay is lifted or litigation resolve.</p>			
<i>Mandate</i>	<p>All employees whose work is in connection to the contract be <i>vaccinated</i>. There is no testing option.</p> <p>The mandate applies through contract tiers. Subcontractors must attest that its workforce is vaccinated</p>	<p>All employees to be vaccinated.</p> <p>If an employee requires an accommodation or decides to not receive a vaccination, then employee must have a negative COVID test within seven (7) days of being on a worksite with customers/other employees. Must be approved test and not self-administered and self-read.</p> <p>Also requires employer to create and publish a policy and publish policy to employees (in language and literacy level designed to be understandable to workforce), and to appoint someone in charge of the mandate.</p>	<p>All employees and covered contractors' employees to be <i>vaccinated or test negative weekly</i></p>	<p>Per owner</p>	<p>Per employer</p>



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<i>Applies to</i>	Direct federal contracts (not merely pass through or receiving federal dollars).	All businesses of 100 or more employees. 100 defined as all employees in any location, capacity, and regardless of whether exempt.	Contractors who perform indoor work near State employees regularly or for extended times (10 minutes)	Owner project	As Employer dictates
<i>What employees are covered</i>	<p>Applies to all divisions/employees whose work is necessary to the federal contract; and if covered worker is at workplace (then all employees at that workplace must be vaccinated).</p> <ul style="list-style-type: none"> • <i>E.g.</i> if an accounting employee works on billing for the federal contract, then that employee plus all employees at that employee's worksite must be vaccinated. <p>Applies to subcontractors at all tiers. May assume subcontractor is performing unless it has credible reason to believe otherwise.</p>	All employees unless qualify for exception below.	Employees who work with State, at a State workplace for more than 10 minutes. Not telework.	Workers on Owner project	As Employer dictates



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Exceptions		<p>The following employees do not need to be vaccinated or provide testing records unless have more than de minimus time with customer or employers:</p> <ul style="list-style-type: none"> • Work remote and do not report to work where customers/other employees are present • Work exclusively outdoors. Partially completed structure and time in trailer are not outdoors. <p>Employees must have a negative COVID test within seven (7) days of being on a worksite with customers/other employees.</p>			
Accommodations	<p>Accommodate legitimate medical & sincerely held religious belief, practice or observance.</p> <ul style="list-style-type: none"> • Engage in interactive process with employee to determine accommodation • Must accommodate unless unduly burdensome to employer. • Definition of “unduly burdensome” is different for medical and religious accommodations • Cost & difficulty administering may be unduly burdensome. • Accommodation may range from job reassignment to wearing a mask to testing, or a mixture of these. 		Same	Same	Same
Masking & distancing	<p>High or substantial transmission areas: required for all</p> <p>Low/moderate transmission areas: not required for vaccinated; required for non-vaccinated</p>	Required if not vaccinated			



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<i>Paid time: Vaccinations</i>	<p>FLSA guidance: vaccination time may be paid because necessary to perform jobs safely</p> <p>Increase costs may be subject to change order.</p> <p>May be able to require proof of length of time after certain point.</p>	<p>Employer is required to pay reasonable time for vaccination, up to 4 hours, and cost of vaccination.</p> <p>Employer also must provide sick leave (if not already provided) for reasonable time to recover from side effects of vaccine. Paid recovery time may be 2 days.</p>			
<i>Paid time: testing</i>	<p>Testing is not an option under federal contractor mandate.</p> <p>If testing is provided as a reasonable accommodation, then cost and testing time may need to be paid unless doing so is unduly burdensome. This is an open question.</p>	<p>This question is open. Testing is an employee's choice as an alternative to the mandatory vaccine, and so not a job requirement.</p> <p>If employee chooses to not be vaccinated and employer provides a testing alternative, then the test is the employee's decision and likely employee's burden: employer likely will not need to pay for the cost or time of testing unless the testing is done on the jobsite during work hours.</p> <p>Employer may be required to pay for reasonable time and cost of testing pursuant to an accommodation for medical or religious reason unless doing so is unduly burdensome.</p>			
<i>Enforcement</i>	<p>Unknown—could be agency or whistleblowers</p>	<p>Problematic—not enough OSHA inspectors (would take 160 years to inspect business). Likely few publicized cases, whistleblower, etc.</p>		Owner	Employer fires



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<i>Fines</i>	Fine + potential debarment	About \$14k per violation (either per employee or per worksite). Criminal penalties for knowingly supplying false information, statements, documentation			
<i>Mandatory Bargaining</i>	Uncertain. There is an argument that there is not mandatory decisional bargaining but there may be mandatory bargaining over the effects of the mandate. The NLRB General Counsel issued an opinion that both the decision to mandate and the effects of the mandate are subject to mandatory bargaining. The argument means little, however. Maintaining good relationships with the unions require keeping the unions informed of mandates that may be imposed or practically required, efforts taken to protect worker rights, and other issues important to the unions. AGC is in conversations with the trades about these issues.		Same	Same	Must negotiate all
<i>Recovery for cost from owner or upstream contractor</i>	Likely there is a basis for recovery on some contracts—check the contract clauses. AGC-MN Webinar of 2021-Oct-22 explains the different form contract clauses and how to request a change order. Contractors also should give owners or upstream contractors a reservation of rights for both the contractual mandate terms and changes in the mandate guidance.		Same	High likely—check contractor's duties to control the safety of the workplace	Unlikely
<i>Unemployment insurance</i>	Unknown. We expect MN DEEDS to reject claims for unemployment insurance if an employee opts to not be vaccinated	Unknown. We expect MN DEEDS to reject claims for unemployment insurance if an employee opts to not be vaccinated or comply with a testing option.		Likely to reject claim	Fair chance to reject claim



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Worker's Comp	Unknown. We expect workers' compensation to cover long term COVID related illnesses. Short term side effects from a vaccine may be covered if the effects last longer than several days.		Same	Same	Same
Proof of vaccination status	Likely not attestation but employer review vaccine card or documentation listed in OSHA ETS.	<p>Employee provides one of the following:</p> <ul style="list-style-type: none"> • Immunization record from health care provide or pharmacy • Copy COVID 19 vaccination record card • Copy of medical records showing vaccination • Copy of immunization records from government system • Other official documentation showing type of vaccine, date administered, health professional or clinic who administered vaccine • If unable to provide above, then signed attestation <p>If employee does not provide proof of vaccination, then employer must treat employee as not vaccinated. If employer verifies vaccination status before ETS takes effect, then employer may rely on proof used at the time.</p> <p>Note: Carpenters have developed a "TRAIN" system to help track vaccination status and should be considered.</p>	Attestation form that HR reviewed acceptable proof	Per owner	Per Employer



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Testing		<p>If not vaccinated, employee must provide documentation showing a negative test result at least 7 days prior to entering worksite where customers or other employees are present. If employee fails to provide documentation, then employee must be removed from worksite until proof is provided.</p> <p>If employee is diagnosed with or tests positive for COVID-19, then there is no testing requirement for 90 days.</p>			
Records	<p>HIPPA does not apply. ADA, MHRA & common law confidentiality may apply. OSHA considers the records to be confidential medical records. Expect OSHA view to be persuasive and employers required to treat the records as a medical record: confidential and need-to-know access.</p> <p>Appoint coordinator of implementation.</p>	<p>Create roster of vaccination status plus copy of proof of vaccination status.</p> <p>Maintain a record of each test provided by each employee.</p> <p>Records are confidential medical records under 29 C.F.R. § 1910.1020. Maintain confidentiality and restrict access to need-to-know.</p> <p>OSHA recordkeeping requires logging OSHA illness & injury if case is confirmed COVID, work related, & involves recording criteria (e.g. treatment, days away from work). OSHA may inspect records.</p>	Same	Same	Same



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<i>Downstream</i>	Required to include mandate provision in contracts with subcontractors. May expect subcontractors to comply but, if there is reasonable basis to believe that subcontractor is not compliant, then there may become a duty to investigate. Expect reservation of right / change order.	Does not flow to subcontractors. Subcontractors may be required to comply if it has more than 100 employees or is subject to another mandate.	Attestation from subcontractor that it has complied with executive order	Have subcontractor confirm and verify	Have subcontractor confirm and verify
<i>Employee Notification</i>		Employee must notify employer if diagnosed or tests positive for COVID-19. Employer must remove the employee from the workplace until able to return per guidance.			