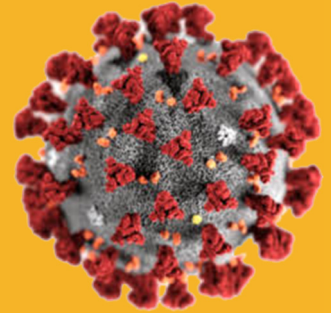




# TEAMSTERS SAFETY & HEALTH COVID-19 Guidance



## Employer Responsibilities and Workers' Rights

### Coronavirus (COVID-19, SARS-CoV-2)

November 17, 2021

Employees and employers, alike, have rights and responsibilities under federal and state agencies which require appropriate safeguards to be put in place to protect against COVID-19. These safeguards pertain to general health and safety rights, as well as those specific to a COVID-19 prevention program, such as vaccination and testing, aspects of each may be subject to collective bargaining.

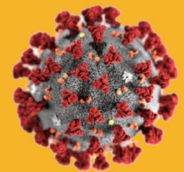
The IBT Safety and Health Department has developed the following documents that to assist you with this goal:

- Bargaining Outline,
- Model Contract Language, and
- Memorandum of Understanding on Vaccination and Testing.

For additional concerns, questions, and information, please contact the IBT Safety and Health Department at (202) 624-6960 or visit: <https://teamster.org/COVID-19>.

#### VACCINE AND TESTING RIGHTS AND RESPONSIBILITIES

The Occupational Safety and Health Administration (OSHA) recently issued an “*Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing*” – with rolling compliance dates of December 4, 2021, and January 6, 2022 - to protect unvaccinated employees of large employers (100 or more employees) by requiring covered employers to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work in lieu of vaccination.



The COVID-19 ETS for healthcare<sup>1</sup> requires employers to pay for vaccinations and provide a brief amount of paid leave to employees to get vaccinated and recover from any potential side effects experienced after vaccination.

Collective bargaining may address worker protection beyond what is prescribed by OSHA, other issues affecting conditions of work, and conditions involving an employer whose workforce is under 100 employees and therefore would not be covered by the OSHA vaccine mandate.

## THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”)

The U.S. Equal Employment Opportunity Commission (EEOC), a federal agency that enforces federal laws prohibiting employment discrimination as well as the Americans with Disabilities Act (the “ADA”) and other EEO laws, also addresses COVID-19 related issues affecting employers and employees in the workplace. Current EEOC technical assistance<sup>2</sup> answers COVID-19 questions from the perspective of the EEO laws.

### ***Can my employer require all employees to be vaccinated?***

According to the EEOC, employers may, in general, require employees who physically enter the workplace to be vaccinated for COVID-19 if the employer provides reasonable accommodations under the ADA and Title VII of the Civil Rights Act of 1964 for employees who cannot be vaccinated because of a disability or their religious beliefs, practices, or observances, respectively—provided such accommodations do not pose an undue hardship on the business.

Other federal, state, and local laws, not in EEOC’s jurisdiction, may place additional restrictions on employers. State updates on COVID legislation can be found on the National Council of State Legislators webpage ([www.ncsl.org](http://www.ncsl.org)).

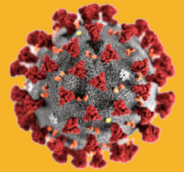
**As noted earlier, OSHA’s recent ‘Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing’ requires that** large employers (100 or more employees) establish, implement, and enforce a written mandatory COVID-19 vaccination policy with an exception for employers that instead establish, implement, and enforce a written policy that requires unvaccinated employees to undergo weekly COVID-19 testing and wear a face covering at the workplace instead of vaccination.

### ***May the employer offer incentives for employees to be vaccinated?***

**EMPLOYERS** may offer incentives for employees to be vaccinated if the incentives are not forced. Because vaccinations require employees to answer pre-vaccination disability-related screening questions, a very large incentive could make employees feel pressured to disclose protected medical information. Vaccines could be considered taxable income to the employee if substantial in nature according to the U.S. Internal Revenue Service (IRS).

<sup>1</sup> <https://www.osha.gov/coronavirus/ets>

<sup>2</sup> [https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term)



OSHA's *'Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing'*<sup>3</sup> requires that large employers (100 or more employees) support vaccination by providing employees reasonable time, including up to four hours of paid time at the employee's regular rate of pay, to receive each vaccination dose, and reasonable time and paid sick leave to recover from any side effects experienced following each dose.

**EMPLOYERS** may also provide employees and their family members with information to educate them about COVID-19 vaccines and raise awareness about the benefits of vaccination.

***May the employer pay for employees to be tested for covid-19?***

OSHA's *'Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing,'* requires that large employers (100 or more employees) ensure that each employee who is not fully vaccinated is tested for COVID-19 at least weekly (if in the workplace at least once a week) or within 7 days before returning to work (if away from the workplace for a week or longer). The ETS does not require employers to pay for any costs associated with testing. However, employer payment for testing may be required by other laws, regulations, or collective bargaining agreements, or other collectively negotiated agreements. In addition, nothing prohibits employers from voluntarily assuming the costs associated with testing.

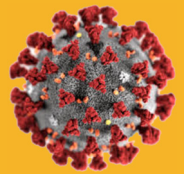
***Is information about an employee's covid-19 vaccination, and knowledge that an employee has covid-19, or has symptoms associated with the disease, confidential medical information?***

The ADA requires that an employer:

- Keep all medical information about employees confidential<sup>4</sup>, even if that information is not about a disability. The information that an employee has symptoms of, or a diagnosis of, COVID-19, is medical information.
- Store medical information separately from the employees' personnel file, should they choose to require employees to provide documentation or other confirmation of vaccination.
- The fact that this is medical information does not, however, prevent the manager from reporting to appropriate employer officials so that they can take actions consistent with guidance from the CDC, OSHA, and other public health authorities.
  - Who in the organization needs to know the identity of the employee will depend on each workplace and why a specific official needs this information?
  - Employers should make every effort to limit the number of people who get to know the name of the employee.
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<sup>3</sup> See IBT Fact Sheet on the OSHA ETS at <https://teamstersafety.org/>

<sup>4</sup>[https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term)



- Also, all employer officials who are designated as needing to know the identity of an employee should be specifically instructed that they must maintain the confidentiality of this information.
- Employers may want to plan what supervisors and managers should do if this situation arises and determine who will be responsible for receiving information and taking the next steps.

**Under OSHA’s ‘Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing’,** covered employers must determine the vaccination status of each employee, obtain acceptable proof of vaccination status, and maintain records and a roster of each employee’s vaccination status. This information is subject to applicable legal requirements related to the confidentiality of medical information. The ETS also requires covered employers to make available for examination and copying an individual’s COVID-19 vaccine documentation and any COVID-19 test results to that employee and to anyone having written authorized consent of that employee.

***If an employer requires an employee to get the vaccine is the time spent getting the vaccine including travel time to and from the vaccination site compensable working time? If the employee has a reaction or does not feel well after getting the vaccine and does not have any more available earned sick time hours, will he/she be compensated for missed work?***

The OSHA ‘Emergency Temporary Standard (ETS) for COVID-19 Vaccination and Testing’<sup>15</sup> requires covered employers to support vaccination by providing employees reasonable time, including up to four hours of paid time at the employee’s regular rate of pay, to receive each vaccination dose, and reasonable time and paid sick leave to recover from any side effects experienced following each dose.

This issue, however, would also be subject to bargaining between the Union and the employer.

***Is the employer required to provide accommodation to employees with a disability?***

**EMPLOYERS** are required under the ADA to protect applicants and employees from disability discrimination by providing reasonable accommodations for individuals with disabilities.

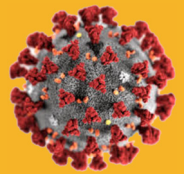
**EMPLOYEES** with disabilities that put them at high risk for complications of COVID-19 may request telework as a reasonable accommodation to reduce their chances of infection during the pandemic.

Having symptoms associated with the COVID-19 does not rise to the level of disability. However, having a complication such as pneumonia or having a compromised immune system may require your employer to provide you with accommodations. For suggestions about types of reasonable accommodations for unvaccinated employees, see the questions and answers number [K.6]<sup>6</sup> in the EEOC Technical Assistance Questions and Answers document, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.<sup>7</sup>

<sup>5</sup> <https://teamstersafety.org/>

<sup>6</sup> <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.6>

<sup>7</sup> <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D>



## RIGHT TO BARGAIN

Under the National Labor Relations Act (NLRA), the Union has a right to bargain over the conditions of work, including hazard controls, testing, work hours, and sick leave. Whenever working conditions change, such as during the COVID-19 pandemic, even during the life of a contract, the union has a right to demand bargaining over the change.

## RIGHT TO COVERAGE BY OSHA

Private Sector Workers — OSHA covers most private sector employers and workers in all 50 states, the District of Columbia, and other U.S. jurisdictions either directly through Federal OSHA or an OSHA-approved State Plan (28)<sup>8</sup>. State-run health and safety programs must be at least as effective as the Federal OSHA program. To find the contact information for the OSHA Federal or State Program office nearest you, see the OSHA Regional and Area Offices map (<https://www.osha.gov/contactus/bystate>).

State and Local Government Workers — Workers at state and local government agencies are not covered by federal OSHA but have protections if they work in one of the states or territories that have an OSHA-approved state program. Twenty-two State Plans (21 states and Puerto Rico) cover both private and state and local government workplaces. The other six State Plans (Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands) cover state and local government workers only. Visit <https://www.osha.gov/contactus/bystate> to find out if, as a state government worker, you have occupational safety and health regulatory protection.

## RIGHT TO SAFE WORKING CONDITIONS

Under federal or state law, you are entitled to a safe workplace. Your employer must provide a workplace free of known health and safety hazards. Employers are required by the federal OSHA or State OSHA Plans, as a 'general duty,' to provide a workplace free from recognized hazards. This is in addition to specific requirements under various OSHA standards. You have the right to file a complaint (confidential or not) with OSHA if you believe your working conditions are unsafe or unhealthful. The best way to do this is to consult your union representative and have the union file a complaint. <https://www.osha.gov/workers/file-complaint>

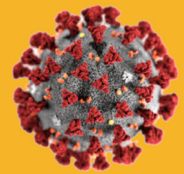
## RIGHT TO PROTECTION FROM RETALIATION

OSHA prohibits employers from retaliating against workers for exercising a variety of rights guaranteed under the Occupational Safety and Health Act (OSH Act), such as filing a safety or health complaint with OSHA, raising a health and safety concern with their employers, participating in an OSHA inspection, or reporting a work-related injury or illness.

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<sup>8</sup> <https://www.osha.gov/stateplans>





If you have suffered retaliation<sup>9</sup> (firing, laying off, demoting, denying overtime or promotion, or reducing pay or hours) because you voiced concerns about a health or safety hazard, you have the right to file a whistleblower protection complaint.<sup>10</sup> The IBT can help file the complaint. OSHA administers more than twenty whistleblower statutes with varying time limits for filing OSHA has fact sheets<sup>11</sup> that apply to workers in a multitude of industries based on specific laws that cover those workers (commercial motor vehicle driving, transportation agencies, aviation, railroad, and more).

Complaints under Section 11(c)<sup>12</sup> of the OSH Act must be filed within 30 days after the employee learns of the adverse action. Private-sector drivers (including independent contractors while personally operating a commercial motor vehicle) and other workers (including mechanics and freight handlers) involved in activities directly affecting commercial motor vehicle safety or security, must file their complaint within 180 days after the alleged retaliatory action occurred or after the date on which the employee became aware of the action<sup>13</sup>.

## RIGHT TO REFUSE WORK

Under section 11(c)<sup>14</sup> of the Occupational Safety and Health Act (OSH Act), a worker may refuse to work and be protected from retaliation, if:

- The worker believes that they faced death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing).
- The worker tried, where possible, to get his or her employer to correct the condition, was unable to obtain a correction, and there is no other way to do the job safely, or
- The situation is so urgent that the worker does not have time to eliminate the hazard through regulatory channels, such as calling OSHA.

This includes instances where a worker believes they may be in danger of workplace violence. Before taking such action, a member should speak to the steward or another union representative.

## ADDITIONAL RIGHTS UNDER OSHA

You also have the right to:

- Receive workplace safety and health training in a language you understand.
- Receive required safety equipment, such as gloves or respirators.
- Report an injury or illness and get copies of your medical records.
- Review records ('OSHA Log' and more) of work-related injuries and illnesses including COVID-19 infections.
- That occur on the job including the name of the affected worker.

<sup>9</sup> <https://www.whistleblowers.gov/>

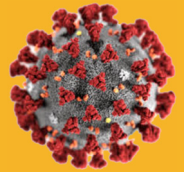
<sup>10</sup> <https://www.whistleblowers.gov/>

<sup>11</sup> <https://www.osha.gov/publications/bytopic/whistleblowers>

<sup>12</sup> <https://www.osha.gov/sites/default/files/publications/OSHA4151.pdf>

<sup>13</sup> <https://www.osha.gov/sites/default/files/publications/OSHA-factsheet-whistleblower-trans-sector.pdf>

<sup>14</sup> <https://www.osha.gov/sites/default/files/publications/OSHA3812.pdf>



- Participate in safety and health committees.
- Participate in OSHA inspections and other OSHA-related activities.
- See results of safety and health measurements (e.g., noise, chemicals).

## **INFORMATION AND RESOURCES**

### **IBT Fact Sheets, Guidance Documents, and other Resources**

[www.teamstersafety.org](http://www.teamstersafety.org)

### **OSHA COVID-19 Frequently Asked Questions**

<https://www.osha.gov/coronavirus/faqs>

### **OSHA Worker Rights and Protections**

<https://www.osha.gov/workers/>

### **What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws**

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

**For concerns, questions, and information, contact the IBT Safety and Health Department at (202) 624-6960 or [ibtsafety@teamster.org](mailto:ibtsafety@teamster.org) or visit: <https://teamster.org/COVID-19>**