



Policy Primer

A Guide to Current Policy Issues

IASB Policy Updates: Special Release OSHA Mandatory Policy on Employee Vaccination

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) published an emergency rule requiring certain employers to require vaccinations against COVID-19 for their employees. The rule, or emergency temporary standard (ETS) was issued through the agency's emergency rulemaking powers and is in 29 C.F.R. 1910.501.

This rule requires school districts with 100 or more employees (including full-time, part-time, and temporary employees like substitutes) to have in place a policy that requires full vaccination against COVID-19. For employees who do not wish to be vaccinated, the policy must provide for a requirement that employees be subject to weekly testing and use of face coverings. Medical and religious exemptions must also apply. This policy and accompanying exhibits and regulations will create additional record-keeping requirements for districts.

To best assist our members, IASB is also issuing an FAQ guidance document to our members. This document is designed to answer many common questions related to the requirements of the ETS. The FAQ document can be found on the IASB website in the HR Services toolkit.

Changing Legal Landscape

Districts that meet the 100-employee threshold are legally required to adopt a policy no later than December 6, 2021. Due to the short timeframe, Districts should adopt the policy using the process for emergency adoption of policy described in IASB sample policy **209.2—Adoption of Policy**.

At the time of publication of this *Primer*, at least one federal court case exists within our 8th circuit that could result in a temporary stay (pause) of the enforcement of OSHA's rule. Districts with the policy already adopted could suspend the policy while the stay was in place. This means the policy still exists, but enforcement of it is temporarily paused. To suspend policy, see IASB sample policy **209.4—Suspension of Policy**.

IASB will continue to issue further guidance and communication with districts. For now, it is best to have this mandatory policy in place for all qualifying districts. If a temporary stay is issued by the courts, IASB will communicate this to districts, and issue further guidance and suggestions at that time.

Further detail for each policy and/or regulation follows this listing. For specific questions please contact Siobhan Schneider, Associate Executive Director, Board Leadership & Legal Services, sschneider@ia-sb.org or (515) 247-7028.

Updates At-a-Glance

New—403.7—Employee Vaccination/Testing for COVID-19

New—403.7R1—Employee Vaccination/Testing for COVID-19 Regulation

New—403.7R2—Required Notices to Employees

New—403.7E1—Employee Personal Attestation of Vaccination Status

New—403.7E2—Medical Accommodation Request Form

New—403.7E3—Religious Accommodation Request Form

IASB Sample Policy Updates

New—403.7—Employee Vaccination/Testing for COVID-19

This new policy is issued in response to OSHA's recent rule (ETS) requiring vaccinations of employees for employers with 100 or more employees. This applies to any employers who reach 100 or more employees at any time while the rule is in effect. This policy is mandatory and allows for an alternate testing and face covering procedure for employees who do not wish to be vaccinated. It also permits medical and religious exemptions. This policy also creates notice to employees that they may be subject to disciplinary action for failure to comply with the requirements of the policy.

New—403.7R1—Employee Vaccination/Testing for COVID-19 Regulation

This regulation offers additional administrative level guidance to administrative teams on the record-keeping and enforcement requirements of the policy.

New—403.7R2—Required Notices to Employees

This regulation offers required notices to employees in accordance with OSHA requirements.

New—403.7E1—Employee Personal Attestation of Vaccination Status

This form is an option for districts to utilize to fulfill the personal attestation option of vaccination status reporting that is required by the rule.

New—403.7E2—Medical Accommodation Request Form

This is an optional form for district to utilize to keep record of requests for medical accommodation, and the status of whether those requests have been approved.

New—403.7E3—Religious Accommodation Request Form

This is an optional form for district to utilize to keep record of requests for religious accommodation, and the status of whether those requests have been approved.

Note: *This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is furnished with the understanding that IASB is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.*

EMPLOYEE VACCINATION/TESTING FOR COVID-19

In an effort to comply with federal Occupational Safety and Health Administration requirements, the district is requiring all employees to become fully vaccinated against COVID-19, or in the alternative to produce weekly evidence of negative COVID-19 testing and utilize face coverings at work sites.

Vaccination

All employees are required to become fully vaccinated against COVID-19. Full vaccination occurs when an employee has received both primary COVID-19 vaccination doses, or one single dose if the vaccine only requires one dose, and have waited two weeks following the last dose administered. This requirement will become effective no later than December 6, 2021. Employees who have received full vaccination against COVID-19 must submit proof of vaccination no later than December 6, 2021. Employees who have not received both (if a vaccine requires a 2 dose regimen) primary doses of a COVID-19 vaccine will be required to comply with the testing and face covering requirements of the section below. Employees who have received both primary doses of the COVID-19 vaccine on or before December 6, 2021, but who have not yet passed the two week waiting period for full vaccination efficacy are not required to comply with the testing and face covering requirements of the section below.

Face Coverings and Testing

Beginning December 6, 2021, employees who do not wish to obtain vaccination against COVID-19 must wear face coverings at all times while indoors, in a vehicle, or in another enclosed space as described in detail in procedure 403.7R1. Beginning January 4, 2022, employees who are not fully vaccinated must also provide proof of negative COVID-19 test results every 7 days.

Reasonable Accommodations

The vaccine requirement does not apply to employees for whom a vaccine is medically contraindicated; for whom medical necessity requires a delay in vaccination; or who are legally entitled to a reasonable accommodation due to a disability or sincerely held religious beliefs, practices or observances. If an employee requires accommodation from any other part of the policy for medical or religious reasons, the employee may request one. Qualifying employees will be expected to submit verification of one of these exemptions in order to receive an accommodation.

Employees who fail to abide by the requirements of this policy may face disciplinary action up to and including termination. It is the obligation of the Superintendent to establish appropriate procedures necessary to enforce this policy.

NOTE: This is a mandatory policy for districts which employ 100 or more employees, regardless of full time or part time status. This should also include temporary employees such as substitute teachers. For more information on this policy and supporting guidance, see IASB Policy Primer 30-2.

Legal Reference: 29 C.F.R Part 1910.501
42 U.S.C. 12101
42 U.S.C. 2000e
34 C.F.R. pt. 100
34 C.F.R. pt. 104
Iowa Code ch. 216

Cross Reference: 403.3 Communicable Diseases

Approved _____

Reviewed _____

Revised _____

EMPLOYEE VACCINATION/TESTING FOR COVID-19 REGULATION

Acceptable Proof of Vaccination Status

To satisfy the vaccination requirement within this policy, employees must submit to the Superintendent or Superintendent's designee acceptable proof of vaccination status no later than December 6, 2021.

Acceptable proof of vaccination status includes:

1. Immunization records from a healthcare provider or pharmacy;
2. A copy of a COVID-19 Vaccination Record Card;
3. A copy of medical records documenting immunization;
4. A copy of immunization records from a public health, state or tribal immunization information system;
5. Any other official documentation that contains the type of vaccine administered, dates of administration, and the name of the administering health provider or clinic;
6. If any other records are unavailable a signed and dated personal attestation statement.

Any employee who fails to provide acceptable proof of vaccination status may face disciplinary action up to and including termination.

Record Keeping

The district is required by law to keep a roster of the vaccination status of all employees.

Any records showing proof of employee vaccination status the district maintained prior to November 5, 2021 will be considered sufficient proof of the employee's vaccination status.

Any records related to an employee's vaccination status, including the employee vaccination status roster, will be considered confidential employee medical records not subject to public disclosure and stored as employee medical records consistent with law. These records will be maintained by the district for as long as 29 C.F.R. 1910.501 remains in effect.

Testing

Beginning January 4, 2022, employees who are not fully vaccinated must submit proof of negative COVID-19 test results every 7 days. Documentation of negative test results must be provided to the district no later than every 7 days. Employees who are not fully vaccinated and do not report to work for longer than 7 days (ex. an employee on vacation or on leave) must provide documentation of a negative test result upon their return to work. If the employee fails to provide proof of a negative test result, the district must keep the employee removed from the workplace until the negative test result documentation is provided.

Employees who receive a positive COVID-19 test result or have been diagnosed with COVID-19 by a licensed healthcare provider; are not required to produce another test result for 90 days from the date of their positive result.

Positive Test Results

Regardless of vaccination status, employees must report any positive COVID-19 test results or a diagnosis of COVID-19 by a licensed healthcare provider to the district. Any employee so reporting will be immediately removed from the workplace and will stay removed from the workplace until any of the following occur:

- The employee receives a negative result on a COVID-19 nucleic acid amplification test (NAAT) following a positive result on a COVID-19 antigen test if the employee chooses to seek the confirmatory test

- The employee meets the return to work criteria in the CDC's "Isolation Guidance" listed here:
<https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html>
- The employee receives a recommendation to return to work from a licensed healthcare provider.

New Employees

New employees will be subject to the provisions of this policy upon hire as soon as practicable. Within 7 days of hire, new employees will provide proof of their vaccination status to the district in accordance with the requirements of this policy. Unless fully vaccinated, new employees will abide by the testing and face covering requirements of this policy within 7 days of hire.

Leave

As required by 29 C.F.R. 1910.501, the district will provide up to 4 hours of paid leave to cover the time required to travel to and obtain each dose of the primary vaccination for COVID-19. If additional time is required, the employee may use other accrued leave available. The district will also provide reasonable paid sick leave to employees to recover from any effects of each primary dose of COVID-19 vaccine. The district may require employees to use previously accrued paid sick leave first.

Employees Excluded

Employees who work fully remote from the job site; employees working from home; and employees who work exclusively outdoors are excluded from the vaccination, testing and face covering requirements of this policy. Employees fully remote from the job site does not include employees whose work requires them to work off site from the district but in the presence of students or employees of the district. Employees who work exclusively outdoors means those individuals who do not spend any part of their work time indoors.

Face Coverings

Beginning December 5, 2021, face coverings must be worn by all employees who have not provided proof of full vaccination status to the district. Face coverings will be worn when employees are working indoors, in vehicles or other enclosed spaces. Face coverings are not required to be worn when employees are: working alone in a room with floor to ceiling walls and a closed door; verifying identity for security purposes or eating/drinking; when an employee is wearing a respirator or facemask; or where the district can show that the use of a face covering is infeasible or creates a greater hazard. The face covering must fully cover the employee's nose and mouth; and be replaced when wet, soiled or damaged.

Reporting Requirements of the District

The district will report to OSHA:

- Each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality;
- Each work-related COVID-19 inpatient hospitalization within 24 hours of the employer learning about the inpatient hospitalization.

The district will report to individual employees or anyone having written authorized consent of the employee by the end of the next business day after the request is made:

- Documentation of any COVID-19 test results for that employee;
- The aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

The district will provide to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or their designee:

- A copy of this policy, and the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace, to be provided within 4 business hours of the request being made; and
- All other records and supporting documents related to this policy by the end of the next business day of the request being made.

REQUIRED NOTICES TO EMPLOYEES

For additional information on COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated, please consult the following document “Key Things to Know About COVID-19 Vaccines” <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>

29 C.F.R. 1904.34(b)(1)(iv) prohibits the employer from discharging or in any manner discriminating against an employee for reporting a work-related injury or illness.

11(c) of the Occupational Safety and Health Act prohibits the employer from discriminating against an employee for exercising rights under, or as a result of actions that are required by, this policy. 11(c) also protects employees from retaliation by the employer for filing an occupational safety or health complaint, reporting a work-related injury or illness, or otherwise exercising any rights provided by the OSH Act.

18 U.S.C. 1001 and section 17(g) of the OSH Act provide for criminal penalties associated with knowingly supplying false statements or documentation in accordance with this policy.

EMPLOYEE PERSONAL ATTESTATION OF VACCINATION STATUS

I, _____ as an employee of the District do personally attest to the following:

1. My vaccination status for COVID-19 is _____ [*fully vaccinated or partially vaccinated*].
2. To the best of my recollection, I can provide the following information about my vaccination status: _____ [*type of vaccine administered, date(s) of administration, name of health care providers and clinic site*]
3. I have lost proof of my vaccination status and am otherwise unable to provide proof of my vaccination status.
4. I declare that this statement about my vaccination status is true and accurate. I understand that knowingly providing false information regarding my vaccination status on this form may subject me to criminal penalties.

Employee

Date

MEDICAL ACCOMMODATION REQUEST FORM

Date:	
Employee Name:	
Email Address:	
Position/Job Title:	
Employee Telephone Number:	
Employment Location:	

(1) What is the basis for the medical accommodation that you are requesting?

(2) What are you requesting an accommodation from?

Item	Yes/No
Vaccination for COVID-19	
Testing for COVID-19	
Use of Face Coverings	

Employee Signature

Date

Office Use

This request has been:

Approved

Denied

Administrator

Date

RELIGIOUS ACCOMMODATION REQUEST FORM

Date:	
Employee Name:	
Email Address:	
Position/Job Title:	
Employee Telephone Number:	
Employment Location:	

- (3) Please identify the policy requirement or practice that conflicts with your sincerely held religious observance, practice or belief:
- (4) Please describe the nature of your sincerely held religious beliefs or religious practice or observance that conflict with the policy or practice you have identified above:
- (5) What are you requesting an accommodation from?

Item	Yes/No
Vaccination for COVID-19	
Testing for COVID-19	
Use of Face Coverings	

Employee Signature

Date

Office Use

This request has been:

Approved

Denied

Administrator

Date