

OSHA COVID-19 Vaccination and Test ETS

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How ReturnSafe Helps

4. Paragraph (e) – Determination of Employee Vaccination Status

4.B. If my employees provide a physical copy of one of the acceptable proof of vaccination records, is that acceptable under the standard?

Yes. The employer has various options for acquiring proof of vaccination from each employee. For example, an employer may obtain a physical copy of a vaccination record or they may allow employees to provide a digital copy of acceptable records, including, for example, a digital photograph, scanned image, or PDF of such a record that clearly and legibly displays the necessary vaccination information.

However, to be in compliance, the employer must ensure they are able to maintain a record of each employee's vaccination status. Therefore, the record maintenance requirements cannot be fulfilled by an employee merely showing the employer their vaccination status (e.g., by bringing the CDC COVID-19 vaccination card to the workplace and showing it to an employer representative or showing an employer representative a picture of the immunization records on a personal cellphone). The employer must retain either a physical or digital copy of the documentation

Employees can take a picture of the physical vaccination card and easily upload the image to ReturnSafe where it can reside as the vaccination record.

4.C. Does the roster of employee's vaccination status required by paragraph (e)(4) only apply to vaccinated employees?

No. The roster must list all employees and clearly indicate for each one whether they are fully vaccinated, partially (not fully) vaccinated, not fully vaccinated because of a medical or religious accommodation, or not fully vaccinated because they have not provided acceptable proof of their vaccination status. Although unvaccinated employees will not have proof of vaccination status, the standard requires the employer to include all employees, regardless of vaccination status, on the roster.

Employers can upload their employee roster into ReturnSafe and request that every employee securely provide their vaccination status via the mobile or web app. The ReturnSafe system tracks employee responses and provides the ability for HR admins (and other role-based access) to examine each response to validate vaccination status including fully vaccinated, partially vaccinated, exempt or pending if they have not provided proof of vaccination status.

4.D. Are the vaccination records and roster considered medical records? Are they confidential or can they be shared with the employees?

The records and roster required by the ETS are considered to be employee medical records and must be maintained as such records in accordance with 29 CFR 1910.1020 and must not be disclosed except as required or authorized by this ETS or other federal law, including the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq.

OSHA considers vaccination records required by paragraph (e) of the ETS to be employee medical records concerning the health status of an employee and is requiring this personally identifiable medical information to be maintained in a confidential manner. The vaccination records and rosters must be treated as employee medical records under 29 CFR 1910.1020, without regard to whether the records satisfy the definition of employee medical record at 29 CFR 1910.1020(c)(6)(i).

Under paragraph (l)(1) of the ETS, the employer must make available, for examination and copying, the individual COVID-19 vaccine documentation for a particular employee to that employee and to anyone having written authorized consent of that employee. In addition, paragraph (l)(2) of the ETS provides that by the end of the next business day after a request by an employee or an employee representative, the employer must make available to the requester the aggregate number of fully vaccinated employees at a workplace along with the total number of employees at that workplace.

ReturnSafe is a HIPAA compliant platform. All data is encrypted and secured. Only authorized Employer Admins have access to the information. All data is available for reporting, examination or copying purposes as pursuant to paragraph (l)(1) of the ETS.

4.G. What documentation will be required to verify vaccination status?

The employer must require each vaccinated employee to provide acceptable proof of vaccination status, including whether they are fully or partially vaccinated. The following list includes the acceptable documentation for proof of vaccination:

the record of immunization from a health care provider or pharmacy;
a copy of the U.S. COVID-19 Vaccination Record Card;
a copy of medical records documenting the vaccination;
a copy of immunization records from a public health, state, or tribal immunization information system; or
a copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).

The ReturnSafe app captures the type of vaccination, date(s) of administration and the name of the health care or clinic administering the vaccine(s). The app also captures an image of the vaccination card or other immunization record and uploads into the system as proof of vaccination.

<p>4.H. Do I have any responsibility or associate liability if an employee is fraudulent in representing their vaccine status?</p> <p>While employers may not invite or facilitate fraud, the ETS does not require employers to monitor for or detect fraud. By defining what constitutes acceptable proof of vaccination under the ETS, OSHA is ensuring that employers can accept proof meeting the requirements of paragraph (e) for purposes of compliance with the standard....</p> <p>And although employers are not required to monitor for or detect fraud, these same prohibitions on false statements and documentation apply to employers. If an employer knows that proof submitted by an employee is fraudulent, and even with this knowledge, accepts and maintains the fraudulent proof as a record of compliance with this ETS, the employer may be subject to the penalties in 18 U.S.C. § 1001 and 17(g) of the OSH Act.</p>	<p>Although employers do not have liability if an employee provides fraudulent information, ReturnSafe enables employers to inspect the submitted vaccination proof</p>	
<p>6. Paragraph (g) – COVID-19 Testing for Employees Who are Not Fully Vaccinated</p>		
<p>6.F. Do I have to maintain a copy of each COVID-19 test result for each of my unvaccinated employees?</p> <p>Yes. The employer must maintain a record of each test result required to be provided by each employee pursuant to this ETS or obtained during tests conducted by the employer. These records must be maintained in accordance with 29 CFR 1910.1020 as employee medical records and must not be disclosed except as required by this ETS or other federal law. However, these records are not subject to the retention requirements of 29 CFR 1910.1020(d)(1)(i) (Employee medical records), but must be maintained and preserved while this ETS remains in effect.</p>	<p>Test results can be uploaded into ReturnSafe from the employee app and digital integration with testing providers. No matter which type of test or the testing method the results can be made available in ReturnSafe's HIPAA compliant platform and can be preserved as the official testing record.</p>	
<p>6.J. What type of COVID-19 tests are acceptable under the rule?</p> <p>Under the ETS, a "COVID-19 test" must be a test for SARS-CoV-2 that is: cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the U.S. Food and Drug Administration (FDA) to detect current infection with the SARS-CoV-2 virus (e.g., a viral test); administered in accordance with the authorized instructions; and not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor.</p>	<p>ReturnSafe supports all acceptable OTC and Lab-based testing approaches.</p>	
<p>6.K. May a COVID-19 over-the-counter-test from a local pharmacy be used to satisfy the testing requirements under paragraph (g)?</p> <p>Yes; however, to satisfy the requirements of the standard an over-the-counter (OTC) antigen test may not be both self-administered and self-read unless observed by the employer or an authorized telehealth proctor. Antigen tests indicate current infection by detecting the presence of a specific viral antigen. Most can be processed at the point of care with results available in about 15 to 30 minutes. OSHA included the requirement for some type of independent confirmation of the test result in order to ensure the integrity of the result. This independent confirmation can be accomplished in multiple ways, including through the involvement of a licensed healthcare provider or a point-of-care test provider. If an OTC test is being used, the employer can validate the test through the use of a proctored test that is supervised by an authorized telehealth provider. Alternatively, the employer could proctor the OTC test itself.</p>	<p>ReturnSafe supports OTC test results from both the employer proctored and lab-based approaches. For the employer proctored results, the proctor can sign the results card and the employee can take a picture of the card and upload it into ReturnSafe as a record off the test result. Lab-based results can be captured in a similar manner or integrated directly into the ReturnSafe platform from the lab provider.</p>	
<p>7. Paragraph (h) – Employee Notification to Employer of a Positive COVID-19 Test and Removal</p>		
<p>7.A. Do vaccinated employees need to be removed from the workplace if they test positive for COVID-19? What criteria do they have to satisfy before returning?</p> <p>Yes. Regardless of COVID-19 vaccination status or any COVID-19 testing required under paragraph (g) of the ETS, the employer must immediately remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider and keep the employee removed until the employee:</p> <ul style="list-style-type: none"> 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 a NAAT test for confirmatory testing; meets the return to work criteria in CDC's "Isolation Guidance" (incorporated by reference, § 1910.509); or receives a recommendation to return to work from a licensed healthcare provider. 	<p>ReturnSafe's Case Manager capabilities enable employers to proactively manage positive cases and the return to work clearance process.</p>	
<p>11. Paragraph (l) – Availability of Records</p>		
<p>11.A. Are employers required to provide employees with access to their COVID-19 test records?</p> <p>Yes. The ETS states that the employer must make available, for examination and copying, the individual COVID-19 vaccine documentation and any COVID-19 test results required by the ETS for a particular employee to that employee and to anyone having written authorized consent of that employee by the end of the next business day after a request. Prompt employee access to this information ensures that employees have the information necessary to take an active role in their employers' efforts to prevent COVID-19 transmission in the workplace. In particular, in circumstances where employers or employees choose to have the employee's COVID-19 test results go directly to the employer, the standard gives the employee access to their own records.</p>	<p>All employee test records are available for access in the ReturnSafe Command Center Portal</p>	

11.B. Why are employers required to provide OSHA with the aggregate number of fully vaccinated employees at the workplace along with the total number of employees at that workplace within 4 hours of a request?

Providing OSHA with prompt access to the written policy and the aggregate numbers allows the agency to more rapidly focus inspections on employers that may not be in compliance with the requirements of this ETS. In addition, this information will help OSHA determine what to focus on in an investigation.

All employee vaccination records are available for access in the ReturnSafe Command Center Portal