



# COVID CONFUSION CONTINUES...




YOUR WORKPLACE IS OUR WORK.™

Presented by  
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Your Workplace is our Work®



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## Today's Topics

1. OSHA's Emergency Temporary Standard: comply or not?
2. Other mandates: Healthcare ETS, Federal Contractor Guidelines, CMS Omnibus Vaccination Rule
3. Accommodation/Exemptions: What may be required and sample forms
4. State law or federal law – which reigns supreme: state anti-mandatory vaccination laws or federal vaccination requirements?

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## Today's Topics

5. Vaccination incentives/surcharges: exceptions/accommodations for medical or religious reasons?
6. Alabama's vaccine exemption law

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## OSHA VACCINATION ETS FOR LARGE EMPLOYERS

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## Which employers are covered?

- Employers with 100 or more employees
  - Both full-time and part-time
  - Across all U.S. locations
  - Not including staffing agency employees

But: Excluding employers already covered by the OSHA Healthcare ETS and Executive Order on government contractors

But: The ETS does not cover states with state plans -- which must adopt their own version by December 5th

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## Which employers are excluded?

Employees are not covered if:

- They do not report to a workplace with other employees or customers;
- They work exclusively from home;
- They work exclusively outdoors.

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## What does the ETS require?

Employers must adopt and enforce a written policy which requires either:

- All employees must be fully vaccinated; or
- Unvaccinated employees must be subject to weekly testing and wear a face covering in the workplace.

Exceptions: Medical conditions, ADA disability, sincerely-held religious belief.

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## What qualifies as fully vaccinated?

Two weeks after completing primary vaccination with a COVID-19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the approval, authorization, or listing that is

- Approved or authorized for emergency use by the FDA;
- Listed for emergency use by the World Health Organization; or
- Administered as part of a clinical trial at a U.S. site (with certain additional requirements)

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## Proof of Vaccination

Employers are required to determine the vaccination status of all employees and must retain documentation of vaccination status. Acceptable proof:

- Vaccination card;
- Official documents from healthcare provider or government health agency;
- Documents from government immunization system.
- If an employee does not have any of these, they may submit a sworn statement attesting that they cannot obtain the documentation and stating the details of their vaccination (date, provider, type of vaccine).

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## Recordkeeping Requirements

Employers must maintain --

- Proof of vaccination for all fully or partially vaccinated employees
- A roster of each employee's vaccination status (whether vaccinated or not)
- Must be treated as confidential in separate, secured files
- As long as the ETS remains in effect
- No obligation to obtain or maintain records related to booster shots

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## Paid Time Off - Vaccination

Employers must provide employees with a “reasonable amount” of paid time off to obtain a vaccination.

- Up to a maximum of 4 hours per dose (including travel) for vaccine during working hours
- Cannot be deducted from existing sick or PTO time
- Does not apply for vaccinations outside of working hours
- Required even if employer allows testing alternative to vaccination

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## Paid Time Off – Side Effects

In addition to paid time for vaccination, the employer must allow reasonable time off (up to two days) to recover from the side effects of the vaccine (but not because of a diagnosis of COVID-19 or positive test).

- This time can be deducted from available sick time or paid time off, but cannot be charged against vacation time.
- If employee does not have paid time available, employer must still provide paid time off and cannot charge a negative leave balance.
- Must be provided even if testing alternative is offered.

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## Testing and Masking Option

Employers have the option of offering employees the option of testing and masking instead of vaccination.

- Each employee who is not fully vaccinated and reports to a workplace with others present (co-workers or customers) must be tested at least every 7 days and provide proof of the most recent result within 7 days.
- Exception: Employees who test positive or are diagnosed with COVID-19 are not required to provide test results for 90 days.

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## What tests are approved?

- Tests authorized by the FDA to detect current infection of SARS-CoV-2
  - Nucleic acid amplification tests (NAAT) and antigen tests
  - Antibody tests do not satisfy the testing requirement
- Must be administered in accordance with authorized instructions
- Self-administered and self-read test are not acceptable unless observed by an employer representative or an “authorized telehealth proctor”
- Same recordkeeping requirements as vaccination records apply (including confidentiality).

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## Who pays for testing?

- The OSHA ETS expressly states that it does not require employers to pay for testing.
- Expect some to argue that testing time is compensable under the FLSA as “integral and indispensable” to the job.
- A few states require that employers pay for certain medical tests if required by the employer. But is it really required by the employer?
- Some Collective Bargaining Agreements may require employers to pay for any required testing.

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## What are the masking requirements?

The ETS requires employees who are not fully vaccinated to wear face coverings over their nose and mouth when working indoors or in a vehicle with another person.

- The employer is not required to pay for masks but must ensure that they are in good condition.
- Exceptions: when alone in an enclosed room; when eating or drinking; when necessary for safety or security; when wearing a respirator; when doing so would create a greater safety hazard

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## Employee Notification and Removal

- Employees must be required to immediately notify the employer of a positive test or diagnosis of COVID-19.
- An employee testing positive must be immediately removed from the workplace and cannot be allowed to return until:
  - They receive a negative NAAT test;
  - The employee meets the CDC's return to work criteria; OR
  - They receive approval from a licensed healthcare provider.
- An unvaccinated employee who does not provide the required weekly test results must be removed from the workplace immediately until they comply.

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## Information Requirements

Employers must provide employees with:

- Information about the requirements of the ETS and the employer's policies and procedures established to implement the ETS;
- The CDC document "Key Things to Know About COVID-19 Vaccines" (see <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>);
- Information about protections against retaliation and discrimination; and
- Information about laws that provide for criminal penalties for knowingly supplying false statements or documentation.

This information must be provided in a language and at a literacy level the employees understand.

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## More Information (on Request)

- If requested, an employer must provide an employee (or their representative) access to their own vaccination and testing records by the end of the next business day.
- If requested, by the end of the next business day, an employer must provide an employee (or employee representative) with the number of employees vaccinated and the total number of employees at that workplace.
- If OSHA comes knocking, you must provide your written plan and total COVID numbers within 4 hours and all other records required by the ETS by the end of the next business day.

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## Reporting Requirements

- Employers must report workplace related COVID-19 fatalities within 8 hours of learning of the fatality.
- Employers must report workplace related COVID-19 hospitalizations within 24 hours of learning of the hospitalization.
- Employer must make a good-faith evaluation whether an employee's COVID-19 infection was likely work-related. This will include assessment of exposure risks to other employees and the public, duration of potential exposure and mitigation measures in place.

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## When does the ETS take effect?

December 5, 2021: All provisions except the testing requirement for unvaccinated employees.

January 4, 2022: Employees must be fully vaccinated or subject to weekly testing.

Court Watch: The mandate has been *temporarily* stayed by the federal courts. This may change very quickly.

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## Unionized Employers

THE NLRB General Counsel issued an advisory Memorandum on November 10<sup>th</sup> – taking the position that employers covered by the ETS have a duty to bargain over any choices made under alternatives available under the standard – imposing a blanket vaccination requirement or offering the alternative of masking and testing.

Even where there is no employer option, the General Counsel takes the position that employers have a duty to bargain over the effects – which likely includes costs of testing and masks and time off for positive tests.

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# HEALTHCARE ETS

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## Which employers are covered?

- Most settings where healthcare services or healthcare support services are provided. Exceptions:
  - First aid by non-licensed health care providers;
  - Home healthcare where all employees are fully vaccinated and all visitors are screened;
  - Retail pharmacy;
  - Non-hospital ambulatory care where individuals who might have COVID-19 can't enter;
  - Some hospital ambulatory care settings that are separate and where all employees are vaccinated and all employees screened;
  - Off-site services adjacent to healthcare.

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## What does the Healthcare ETS require?

- Vaccination Encouragement
  - Paid time off for vaccination and recovery from side effects
- Medical Removal Protection Benefits
  - In most circumstances where an employee is diagnosed with, has symptoms of COVID-19 and consents to PCR testing, or a COVID-19 workplace exposure (if unvaccinated and not wearing PPE), paid leave up to \$1,400/week until employee no longer infectious.
- No retaliation
- Notification of Exposure
- Recordkeeping/COVID-19 log
- COVID-19 Plan
- Other safety and PPE requirements.

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## Healthcare ETS

- Went into effect in June/July 2021
- Employers subject to Healthcare ETS do not have to comply with Large Employer ETS while Healthcare ETS is in effect.

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# FEDERAL CONTRACTOR GUIDELINES

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## Which employers are covered?

- Federal Contractors and Subcontractors at any tier.
  - Contracts must be for services, construction, or a leasehold interest in real property. Coverage is to be synonymous with the federal contractor minimum wage proposed final rule (issued pursuant to E.O. 14026).
    - The proposed rule to put E.O. 14026 in effect defines contracts for services as contracts covered by the SCA.
    - Likely excludes coverage for banks or credit unions based solely on FDIC/NCUA deposit insurance.
  - Extends to all areas, buildings, and facilities unless a building/facility is 100% clear of interactions with covered contractor employees.
- Large employer federal contractors do not have to comply with the OSHA large employer ETS.

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## Which K-or employees are covered?

### Are any covered contractor employees excluded?

Generally, no. The Guidelines apply to:

- Covered contractor employees who work exclusively from home;
- Outdoor contractor and subcontractor workplace locations.

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## What do the Federal Contractor Guidelines require?

Executive Departments and Agencies must ensure that covered contracts include a clause that K-ors and sub-K-ors must comply with the Safer Federal Workforce Task Force Guidelines. Essentially that:

- All employees must be fully vaccinated; unless the employee is entitled to an accommodation (medical or religious) or Federal agency grants a 60 day exception due to urgent, mission-critical need;
- All employees or visitors must comply with masking and distancing requirements in covered contractor workplaces;
- Covered contractor designates point person(s) to coordinate COVID-19 safety efforts.

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## What qualifies as fully vaccinated?

Two weeks after completing primary vaccination with a COVID-19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the approval, authorization, or listing that is

- Approved or authorized for emergency use by the FDA;
- Listed for emergency use by the World Health Organization; or
- Administered as part of a clinical trial at a U.S. site (with certain additional requirements).

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## Proof of Vaccination

Employers are required to determine the vaccination status of all employees and must retain documentation of vaccination status. Acceptable proof:

- Vaccination card;
- Copy of medical records documenting vaccination;
- Documents from government immunization system;
- Other official document verifying vaccination with vaccine name, date(s) of administration, and name of health care provider or clinic site.
- Employers may accept digital or scanned copies.
- Personal attestation is not allowed.

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## Federal K-or Guidelines

- No PTO requirements.
- When the federal government issued the large employer ETS and the CMS rules, it also announced that the deadline for federal contractor employees to be fully compliant would mirror those rules, or that employees would have until January 4, 2022, to complete the vaccination series.

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## Non-compliant employees

- The Safer Federal Workforce FAQ specifically discusses an enforcement model of counseling, education, the “additional disciplinary measures as necessary” prior to removal.
- Safer Federal Workforce Guidance issued in September 2021.

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# CMS OMNIBUS STAFF VACCINATION RULE

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## Which employers are covered?

**Certain Medicare and Medicaid-certified providers and suppliers:**

Ambulatory Surgery Centers, Community Mental Health Centers, Comprehensive Outpatient Rehabilitation Facilities, Critical Access Hospitals, End-Stage Renal Disease Facilities, Home Health Agencies, Home Infusion Therapy Suppliers, Hospices, Hospitals, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services, Psychiatric Residential Treatment Facilities (PRTFs), Programs for All-Inclusive Care for the Elderly Organizations (PACE), Rural Health Clinics/Federally Qualified Health Centers, and Long Term Care facilities.

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## Which employers are covered?

### Certain Medicare and Medicaid-certified providers and suppliers:

Those subject to regulations at

42 CFR 416  
 42 CFR 418  
 42 CFR 441  
 42 CFR 460  
 42 CFR 482  
 42 CFR 483  
 42 CFR 484  
 42 CFR 485  
 42 CFR 486  
 42 CFR 491  
 42 CFR 494

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## What does the CMS Rule require?

Covered facilities must develop and implement policies and procedures to ensure that:

- All scheduled staff have received first or only shot by December 5, 2021, and second shot by Jan. 4, 2022, prior to providing services;
- A process to ensure mitigating measures for those not fully vaccinated;
- A process to track and secure documentation of vaccination and booster status;
- A process by which exemption may be granted based on federal standards;
- A process to track and secure documentation of exemption requests;
- A process to ensure that medical exemption requests are supported by specific medical evidence and signed by a licensed practitioner.<sup>38</sup>

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## What does the CMS Rule require?

Covered facilities must develop and implement policies and procedures to ensure that:

- A process for tracking and securing documentation for vaccination status for those who must be delayed in receiving COVID-19 vaccinations, in accordance with CDC guidelines;
- Contingency plans for staff that aren't fully vaccinated.

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## Which employees are covered?

All covered facility staff are covered, except those providing telehealth or telemedicine or support services with no contact with patients or covered staff.

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## CMS Rule

- No PTO requirements.
- Employers may be subject to CMS Rule and OSHA's Healthcare ETS Rule.

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## ACCOMMODATIONS AND EXEMPTIONS; FORM CONSIDERATIONS

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## Accommodations/Exemptions

### Governing Laws:

#### The Oldies and Goodies

- Title VII (religious accommodation): an employer must provide reasonable accommodations related to an employee's sincerely held religious belief or practice, as long as it does not impose more than a *de minimis* cost.
- ADA (disability accommodation): an employer must provide reasonable accommodations that would permit an employee to perform his or her essential job functions, as long as it does not impose an undue hardship on the employer/workforce.

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## Accommodations/Exemptions

### Governing Laws:

- It has long been recognized under both Title VII and ADA that an employer may inquire as to the existence of the underlying belief or disability; and, with respect to the ADA, seek medical certification and dialogue as to the benefit of a proposed accommodation, relationship of proposed accommodation and disability, and the existence of alternative accommodations.
- The EEOC October 25 update to the What You Should Know about COVID-19 page added a whole section on Vaccinations – Title VII and ADA Objections which affirmed these rights.

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## Accommodations/Exemptions

### Governing Laws:

- However, while an employer can ask its employee about a religious belief or practice, it can't require the belief/practice be part of or endorsed by a recognized religion or religious leader. Employees can have sincerely held religious beliefs that are entirely self-developed or even in conflict with their denomination.

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## Accommodations/Exemptions

### Governing Laws:

#### The New Stuff

- Of the four COVID-related federal mandates, one imposes strict rules about the level of documentation an employer must receive: the CMS Omnibus Staff Vaccination Rule. It requires that a licensed practitioner, who is not the employee seeking accommodation, and who is acting in their scope of practice to certify:
  - All information supporting contraindication for the staff member to be vaccinated;
  - Statement by practitioner that practitioner recommends staff member be exempted from requirements.
  - Signed and dated.

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## Accommodations/Exemptions

### **Governing Laws:**

#### The New Stuff

- CMS also recommended—but didn't require—that employers consult the federal agency religious accommodation form when administering religious accommodation requests.

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## Accommodations/Exemptions

### **Governing Laws:**

#### The New Stuff

- Some state and local laws undercut the long-recognized federal employer rights to substantiate and directly conflict with the CMS Omnibus Staff Vaccination Rule.

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## Accommodations/Exemptions

### What should employers consider for exemption forms:

- Assess applicable law and regulation.
- Select an introductory statement – the “why” -- to be shared with employees and possibly their religious guides and doctors.
- Consider internal resources: do you have the quantity and quality of staff to assess accommodation requests and craft follow up inquiries?
- Consider employee capacity: be clear and direct.

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## FORM SAMPLES

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Form Sample – Medical (ADA)

**Request for Medical Exemption from Vaccination**

[insert brief statement of why policy will be adopted: safety, mandate, etc.] Due to the importance of vaccination against COVID-19 for community health and our overall mission, exemptions will be granted on legally required bases only. \_\_\_\_\_ (the Company) is committed to providing a workplace free of discrimination, which includes a commitment to providing reasonable accommodations based on medical or disability-related impairments or limitations of employees. To request an exemption from the required COVID-19 vaccination based on a medical condition or disability, you must complete Section 1 of the form below and have an appropriate health care provider complete Section 2 of the form and return it to the Human Resources Department. This information on this form will be used only to assess the employee's reasonable accommodation request. You may attach additional pages as necessary.

**Section 1: To be completed by employee**

Name (print):	Date:
Dept.:	Position:
Manager:	Work/Cell Phone:

I verify that the information I am submitting to substantiate my request for exemption from the Company's vaccination requirement is true and accurate to the best of my knowledge. I further authorize my medical provider to provide the information requested on this form and follow-up/clarifying information related to this request as necessary. I understand that any falsified information can lead to disciplinary action, up to and including termination.

I further understand that the Company is not required to provide this exemption if doing so is unreasonable, would pose a direct threat to myself or others in the workplace, or would create an undue hardship for the Company. I further understand that, if this request is granted, I may be subject to alternative measures to mitigate disease exposure and transmission.

Employee Signature:	Date:
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**Section 2: Medical Certification for Vaccination Exemption**

Employee Name: \_\_\_\_\_  
 Dear Medical Provider,  
 \_\_\_\_\_ (the "Company") \_\_\_\_\_ [insert similar language: re compelling reason(s) a vaccine mandate is established, unless a permitted exemption applies. The individual named above is seeking an exemption to this policy with respect to this vaccine due to claimed medical contraindications.

Please complete this form to assist the Company in the exemption assessment process.

**The person named above should not receive the above-indicated vaccine due to:**

<b>This exemption should be:</b> <input type="checkbox"/> Temporary, expiring on: ___/___/___ or when _____ <input type="checkbox"/> Permanent ("Permanent" exemption requests may still be subject to verification processes on an annual or other regular basis, or as circumstances dictate)
---

I certify the above information to be true and accurate, and request exemption from the above-indicated vaccine for the above-named individual. I understand that I may be contacted for additional clarification by an authorized representative for additional clarification and/or confirmation of completion of this form.

Medical Provider Name (print legibly):	
Medical Provider Signature:	Date:
<i>(signature stamps are not acceptable)</i>	
Practice Name & Address:	Provider Phone:

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Form Sample – Medical (ADA)

**Section 3: To be completed by the Review Committee (attach additional pages if needed)**

Date of initial request: \_\_\_/\_\_\_/\_\_\_      Date certification received: \_\_\_/\_\_\_/\_\_\_

Describe the requested exception: \_\_\_\_\_

Evaluation of impact (if any): \_\_\_\_\_

**Outcome of Exemption Request**

Approved: \_\_\_/\_\_\_/\_\_\_  
If approved, describe specific accommodation details and additional safety or other protective measures that will be required, if any.

Denied due to inability to grant alternative agreed on: \_\_\_/\_\_\_/\_\_\_  
Describe alternative accommodations available, if any.

Date discussed with employee: \_\_\_/\_\_\_/\_\_\_  
 Final accommodation agreed on: \_\_\_\_\_

Denied due to non-qualifying request: \_\_\_/\_\_\_/\_\_\_  
Describe why request was non-qualifying (ex: not certified, unrelated to a substantial impairment, follow up requests for information not responded to, information provided does not contraindicate vaccination).

Denied due to inability to grant; no available or mutually acceptable alternative: \_\_\_/\_\_\_/\_\_\_  
Date discussed with employee: \_\_\_/\_\_\_/\_\_\_  
 If no accommodation identified by Company or employee, describe why the vaccine exemption would be unreasonable, pose an undue hardship, or a direct threat:  
 \_\_\_\_\_  
 If alternative accommodations were proposed but rejected, summarize the proposal(s), identify who made the proposal(s), and the reason(s) for rejection.  
 \_\_\_\_\_

Department/ Facility Head: \_\_\_\_\_ Date: \_\_\_\_\_

Human Resources Director: \_\_\_\_\_ Date: \_\_\_\_\_

Confidential Employee Medical Vaccination Exemption Request of \_\_\_\_\_

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## Form Sample – Religious

**Request for Religious Exemption from Vaccination**

**Insert brief statement of why policy will be adopted: safety, mandate, etc.** Due to the importance of vaccination against COVID-19 for community health and our overall mission, exemptions will be granted on health-related bases only. \_\_\_\_\_ (The Company) is committed to providing a workplace free of discrimination, which includes a commitment to providing reasonable accommodations to the sincerely held religious beliefs, practices, and observances of our employees. To request an exemption from the required COVID-19 vaccination based on a sincerely held religious belief, please complete the form below and return it to the Human Resources Department. This information on this form will be used only to assess the employee's reasonable accommodation request. You may attach additional pages as necessary.

**To be completed by employees**

Name (print): _____	Title: _____
Dept: _____	Position: _____
Manager: _____	Work/Cell Phone: _____

1) Length of time the accommodation is needed \_\_\_\_\_  
(Long term exemption requests may still be subject to verification processes on an annual or other regular basis, or as circumstances dictate).

2) Is your request pursuant to an established doctrine or practice of an organized religion (e.g. Dutch Reformed Church, Church of Christ, Scientist)? Yes \_\_\_ No \_\_\_

If Your response to #2 is Yes, complete a-d below and sign at the bottom of this form. If your response to #2 is No, go to #3.

a.) Name of Religion: \_\_\_\_\_

b.) Description of Religious Doctrine or Practice that is contrary to the above-named vaccine(s): \_\_\_\_\_

c.) Citation to Religious Doctrine or Practice if published: \_\_\_\_\_

d.) If Employer has a question about the doctrine or practice, it may contact: \_\_\_\_\_  
(Name and Phone Number of Clergy Member): \_\_\_\_\_

Confidential Employee Religious Vaccination Exemption Request of \_\_\_\_\_

3) a.) If your request is not pursuant to an established doctrine or practice of an organized religion, please summarize the basis of your request below.

b.) In some cases, the Company may need to obtain additional information or documentation about your practices or beliefs. If requested, can you provide documentation or other authority to support your belief(s) and need for accommodation? Yes \_\_\_ No \_\_\_

**Verification**

I verify that the information I am submitting to substantiate my request for exemption from the Company's vaccination policy is true and accurate to the best of my knowledge. I further authorize the religious authority I identify to provide the information requested on this form and follow-up/clarifying information related to this request as necessary. I understand that any falsified information can lead to disciplinary action, up to and including termination.

I further understand that the Company is not required to provide this exemption if doing so is unreasonable, would pose a direct threat to myself or others in the workplace, or would create an undue hardship for the Company. I further understand that, if this request is granted, I may be subject to alternative measures to mitigate disease exposure and transmission.

Employee Signature: _____	Date: _____
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Confidential Employee Religious Vaccination Exemption Request of \_\_\_\_\_

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## Form Sample – Religious

**To be completed by the Review Committee: (attach additional pages if needed)**

Date of initial request: \_\_\_/\_\_\_/\_\_\_      Date certification received: \_\_\_/\_\_\_/\_\_\_

Describe the requested exception: \_\_\_\_\_

Evaluation of impact (if any): \_\_\_\_\_

**Outcome of Exemption Request:**

Approved: \_\_\_/\_\_\_/\_\_\_  
If approved, describe specific accommodation details and additional safety or other protective measures that will be required, if any: \_\_\_\_\_

Denied due to inability to grant, alternative agreed on: \_\_\_/\_\_\_/\_\_\_  
Describe alternative accommodations available, if any: \_\_\_\_\_

Date discussed with employee: \_\_\_/\_\_\_/\_\_\_  
 Final accommodation agreed on: \_\_\_\_\_

Denied due to non-qualifying request: \_\_\_/\_\_\_/\_\_\_  
Describe why request was non-qualifying (ex: not certified, unrelated to a religious belief or practice, follow up requests for information not responded to, information provided does not contraindicate vaccination): \_\_\_\_\_

Denied due to inability to grant, no available or mutually acceptable alternative: \_\_\_/\_\_\_/\_\_\_  
Date discussed with employee: \_\_\_/\_\_\_/\_\_\_  
 If no accommodation identified by Company or employee, describe why the vaccine exemption would be unreasonable, pose an undue hardship, or a direct threat: \_\_\_\_\_

If alternative accommodations were proposed but rejected, summarize the proposal(s), identify who made the proposal(s), and the reason(s) for rejection. \_\_\_\_\_


Department/Facility Head: \_\_\_\_\_ Date: \_\_\_\_\_

Human Resources Director: \_\_\_\_\_ Date: \_\_\_\_\_

Confidential Employee Religious Vaccination Exemption Request of \_\_\_\_\_

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**TEMPLATE**

**REQUEST FOR A RELIGIOUS EXCEPTION TO THE COVID-19 VACCINATION REQUIREMENT**

Government-wide policy requires all Federal employees as defined in 5 U.S.C. § 2105 to be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, Federal law may entitle a Federal employee who has a religious objection to the COVID-19 vaccination requirement to an exception from that requirement, in which case the employee would instead comply with alternative health and safety protocols. The Federal Government is committed to respecting the important legal protections for religious liberty.

In order to request a religious exception, please fill out this form. The purpose of this form is to start the accommodation process and help your agency determine whether you may be eligible for a religious exception. You do not need to answer every question on the form to be considered for a religious exception, but we encourage you to provide as much information as possible to enable the agency to evaluate your request. Where there is an objective basis to do so, the agency may ask you for additional information as needed to determine if you are legally entitled to an exception. Objections to COVID-19 vaccinations that are based on non-religious reasons, including personal preferences or non-religious concerns about the vaccine, do not qualify for a religious exception.

Agencies may consider several factors in assessing whether a request for an exception is based on a sincerely held religious belief, including whether the employee has acted in a manner inconsistent with their professed belief. But no one factor is determinative. An individual's beliefs—or degree of adherence—may change over time and, therefore, an employee's newly adopted or inconsistently observed practices may nevertheless be based on a sincerely held religious belief. All requests for a religious exception will be evaluated on an individual basis.

Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service.

**QUESTIONS:**

1. Please describe the nature of your objection to the COVID-19 vaccination requirement.
2. Would complying with the COVID-19 vaccination requirement substantially burden your religious exercise or conflict with your sincerely held religious beliefs, practices, or observances? If so, please explain how.
3. Please provide any additional information that you think may be helpful in reviewing your request. For example:
  - How long you have held the religious belief underlying your objection
  - Whether your religious objection is to the use of all vaccines, COVID-19 vaccines, a specific type of COVID-19 vaccine, or some other subset of vaccines
  - Whether you have received vaccines as an adult against any other diseases (such as a flu vaccine or a tetanus vaccine)

I declare to the best of my knowledge and ability that the foregoing is true and correct.

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

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**MANAGING MULTIPLE APPLICABLE LAWS**

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## Employers Caught in the Middle: Conflicting State Laws

The Large Employer ETS, CMS Omnibus Staff Vaccination Rule, Federal Contractor Guidelines specifically state that they are intended to preempt inconsistent state and local laws. (The Healthcare ETS says that it does not preempt inconsistent requirements of state or local law).

- Where there is a direct conflict, the federal requirements will prevail over state requirements/limitations.
- However, more stringent state laws would not likely be preempted.
- And because of the alternative structure – testing/masking can be offered – some seemingly contradictory state laws may not in fact be inconsistent.

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## VACCINATION INCENTIVES / SURCHARGES

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## Can your health plan charge a higher premium for the unvaccinated?

In general, HIPAA prohibits charging a higher premium based upon health factors, such as vaccination status.

However, an employer can establish a wellness program and provide rewards to employees based on their participation. Under recent regulatory guidance, a wellness program can include a premium surcharge or discount based on vaccination status if the wellness program satisfies certain requirements.

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## Wellness Program Requirements

- Individuals must have the chance to qualify for the reward (or avoid the penalty) at least once per year.
- The reward (or surcharge), together with any other rewards or penalties under health-contingent wellness programs for the plan, must not exceed 30 percent of the total cost of coverage.
- The program must be reasonably designed to promote health or prevent disease.
- The reward must be available to all similarly situated individuals and include a waiver of the standards or a reasonable alternative for an individual for whom the activity (in this case, getting vaccinated) is medically inadvisable or unreasonably difficult due to a medical condition.
- The plan must disclose in the written wellness program the availability of a reasonable alternative standard to qualify for the reward or avoid the surcharge.

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# ALABAMA'S VACCINE EXEMPTION LAW

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## Alabama's Vaccine Exemption Law

- On November 5, 2021, Governor Ivey signed Alabama Senate Bill 9 into law. It was effective immediately.
- SB 9 established:
  - If an employer mandated COVID-19 vaccination as a condition of employment, it had to offer exemptions for medical or religious reasons.
  - It established a mandatory form for employees to request exemption.
  - In addition to the largely self-certifying form, employers were advised to construe employee exemption requests liberally in favor of the employee.

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## Alabama's Vaccine Exemption Law

- SB 9 established an appeal procedure and rule against termination if exemption request denied.
  - Alabama Department of Labor to publish Rules by 11/26/2021 setting appellate procedure, but must comply with following:
    - Employee has seven calendar days to appeal.
    - Administrative Law Judge has 30 calendar days to rule on appeal.
    - If denial of exemption is upheld by ALJ, employee may appeal into court within 14 calendar days.
    - Employer cannot terminate employee until time for appeal has run or, if appeal(s) filed, until ALJ or applicable court rules in its favor.
    - Employer must compensate employee during 7 day appeal period and, if appeal filed, while ALJ considering appeal.

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## Alabama's Vaccine Exemption Law

- SB 9:
  - Affirms right of employment at will for reasons other than refusal to get vaccinated.
  - Also stated it was not creating a private right of action for employees who are terminated “after” refusing to receive a vaccine mandated by their employer.
  - Sunsets on May 1, 2023.

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## Mandated Form– Ala SB 9

Any individual in the State of Alabama who is subject to a requirement that he or she receive one or more COVID-19 vaccinations as a condition of employment may claim an exemption for medical reasons, because the vaccination conflicts with sincerely held religious beliefs, or both.

You may request either a medical or a religious exemption from the COVID-19 vaccination by completing this form and submitting the form to your employer. In the event your employer denies this request, you have a right to file an appeal with the Department of Labor within 7 days. Your employer will provide you with information on how to file an appeal.

I am requesting exemption from the COVID-19 vaccine requirements for one of the following reasons: (check all that apply)

My health care provider has recommended to me that I refuse the COVID-19 vaccination based on my current health conditions and medications. (NOTE: You must include a licensed health care provider's signature on this form to claim this exemption.)

I have previously suffered a severe allergic reaction (e.g., anaphylaxis) related to vaccinations in the past.

I have previously suffered a severe allergic reaction related to receiving polyethylene glycol or products containing polyethylene glycol.

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## Mandated Form– Ala SB 9

I have previously suffered a severe allergic reaction related to receiving polysorbate or products containing polysorbate.

I have received monoclonal antibodies or convalescent plasma as part of a COVID-19 treatment in the past 90 days.

I have a bleeding disorder or am taking a blood thinner.

I am severely immunocompromised such that receiving the COVID-19 vaccination creates a risk to my health.

I have been diagnosed with COVID-19 in the past 12 months.

Receiving the COVID-19 vaccination conflicts with my sincerely held religious beliefs, practices, or observances.

I hereby swear or affirm that the information in this request is true and accurate. I understand that providing false or misleading information is grounds for discipline, up to and including termination from employment.


\_\_\_\_\_  
Employee's Printed Name

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

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 **Mandated Form – Ala SB 9**

(Note: The following must be completed ONLY if claiming the first medical exemption listed above.)

Certification by a licensed health care provider as to the accuracy of information provided above:

\_\_\_\_\_  
Name of Health Care Provider

\_\_\_\_\_  
Signature of Health Care Provider

\_\_\_\_\_  
Date

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