

ELECTRI Council Room: Managing Through Vaccine Mandate Q&A

1. Can our JATC have a vaccine mandate for new applicants?

Yes, the JATC is a private educational setting. All decisions regarding the JATC must be made by the local trustees.

2. Do you have any suggestions for how we should track the impacts in preparation?

Establish your baseline production rates, even if it is only a measured mile on large work tasks or packages. Once the EO is enacted and assuming we will lose significant portions of the workforce, productivity will drop precipitously. The baseline / measured mile will allow you to quantify the impact and seek equitable adjustments to the contract.

3. What defines a federal contractor?

One who is party to a federal contract as a prime or subcontractor.

4. Does one federally funded contract require a company with more than 100 employees to have all employees vaccinated?

The 100-employee threshold does not apply to the deferral Executive Order. The requirement is that all covered contractors make sure that all covered contractor workplaces are vaccinated. *Covered contractor workplace* – means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee's residence.

5. When will we see OSHA's written guidelines?

Best guess is within a week or after January 1.

6. Who can conduct antigen testing? Is that something we could get our safety techs certified to conduct? Instead of working with a third party testing?

Unknown. We expect the OSHA ETS to contain specifics on what testing will suffice.

7. Do you have any recommendations for contractors stuck in between the feds and state governments that are passing legislation that bans mandates?

The federal Executive Order preempts all conflicting state law. States may impose more stringent requirements. The same will be true of the OSHA ETS; however, only 27 states are federal OSHA states and we expect the other state OSHA departments to implement consistent regulations.

8. What about asking for a tax credit for the cost of the time paid for our employees to get tested? Or using LMCC funds to reimburse them for the cost?

We are certainly seeking any and all financial relief for any portion of the mandate that financially impacts the employer.

9. For those of us with supportive labor partners who are doing their best to help us get the workforce vaccinated—are there any ideal terms we can try to negotiate that would set a good precedent for other areas?

Once the ETS comes out, strategic negotiation related to terms and conditions not mandated by law will certainly be a key to minimizing impacts. For example, if the ETS is silent on who pays for testing time, the Chapter is certainly encouraged to push as much of that cost onto the employee as possible.

10. Any suggested wording for new contracts to request compensation for impact of ETS?

I believe that a productivity and fiscal impact study is warranted.

11. I agree that we should be using the tools available to make sure any mandate is reasonably tailored and implemented, but we should not lose sight that vaccines save lives and the mandates will likely not disappear entirely. Can't we run a multi-pronged approach as an industry to encourage vaccines? Is there a way to partner with IBEW to continue to educate and promote vaccines?

We absolutely are pursuing that path and will continue to do that to the maximum extent possible. Recently, NECA and IBEW disseminated a joint statement on the urgency of getting vaccinated and the benefits of doing so. Discussions remain ongoing with the IBEW and we will continue to push this narrative in a variety of ways in the coming weeks and months ahead.

- 12. We have clients that request that we send them individual vaccination status. This is a very tricky area with the EEOC with sharing what could be considered private health information under the ADA. While we can absolutely ask our employees their vaccination status and have them provide validation of their status, is anyone else having the same issues and does anyone have a different understanding of the regulations surrounding the issue? We are taking the stance of not sharing this information with them. Instead we sign a letter stating that we will ensure that we only send qualified personnel to their sites (either vaccinated or those who have an approved religious or medical accommodation on file).**

The federal EO does not provide much guidance on the sharing of confidential information. We believe that the ETS will, but best practice is to share as little PHI as possible when certifying vaccination status.

- 13. COVID pay expired 9/30/21 - will they re-instate this in any way to help us pay for time off for vaccination or impact?**

Doubtful.

- 14. Is the antigen test going to be allowed or will the PCR test be required?**

TBD.

- 15. Do we believe that OSHA will be able to enforce any mandates?**

Interesting, the law provides that OSHA must enforce OSHA regulations – they cannot outsource the job. If I am OSHA, this is a major concern and would seem to present impossible logistical hurdles.

- 16. Has there been discussions with AGC/MCA/other associations about getting on the same page regarding the fact that the costs that will result from these mandates were unforeseen and should be born by customers via extras?**

We are constantly in communication with our peer associations and send joint letters all the time. We have been in contact on vaccine mandates. We are also part of the Employers' COVID-19 Coalition, which is a large coalition of fortune 100 companies and large associations that have joined forces to lobbying for employer interests.

17. If the mandate for testing carries, can we push for at home testing to be included in the allowable methods with a signed attestation by the employee?

We have pushed for simple and cost-effective administration of any testing requirements.

18. Should someone get extremely sick from the COVID shots, do they have any rights and can the employer be held responsible, or is it that the employee had a choice to keep job or not and the vaccine was a choice?

I do not expect employer liability for vaccine reactions to be an issue. I do recommend that employers not vaccinate onsite.

19. What happens when an employee presents a vaccination card that subsequently is determined to be fake - is the employer going to be held responsible?

While the ETS may address this, as long as the employer follows required protocol, malfeasance on the part of a third party should not result in employer liability.

20. Does Local/State/Federal law supersede MOUs established with IBEW?

Laws supersede MOUs. You cannot contract around the law unless there is a CBA exemption. MOU's should be negotiated to address the effects of such laws.

For more information on the vaccine mandate, visit [NECA's Coronavirus Resource Center](#).