

October 26, 2021

Charlie Oppler
2021 President

Executive Office of the President
Office of Information and
Regulatory Affairs
Office of Management and Budget

Bob Goldberg
Chief Executive
Officer

Re: COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking
(RIN: 1218-AD42)

**ADVOCACY
GROUP**

Shannon McGahn
Chief Advocacy
Officer

On behalf of the 1.5 million members of the National Association of REALTORS® (NAR), we would like to thank you for meeting with us to hear our questions and concerns regarding the U.S. Department of Labor, Occupational Safety and Health Administration's (OSHA) forthcoming vaccine Emergency Temporary Standard (ETS) for employers with more than 100 employees. Per our conversation during the October 25, 2021 meeting, we would like to formally submit our questions and comments regarding the vaccine mandate and share coronavirus related resources that we have developed to provide to NAR members, stakeholders, and industry leaders. We respectfully request the following information and clarity regarding the ETS:

- Will the ETS apply to independent contractors?
 - If the ETS does not apply to independent contractors, can businesses apply rules that are more expansive than the ETS? For example, a real estate brokerage that employs both employees and independent contractors may require the COVID-19 vaccine for all workers, including both employees and independent contractors, who return to the office in person or hold in-person open houses.
 - Can real estate brokerages require independent contractors to be vaccinated and maintain their proper independent contractor classification status? We ask that the rule directly address independent contractor classification status and vaccine mandates.
 - Are there liability protections if a business decides not to require vaccinations of independent contractors (if it is not required by the ETS)? Please directly address and include a safe harbor for businesses that do not go beyond the scope of the rule and include workers not otherwise covered.
- Does the rule apply to remote employees? Please be specific in how a business determines whether an employee (or worker, if applicable) is remote?
- How are employees counted to determine business eligibility for this rule? Please provide clarity on whether and how a business' subsidiaries or affiliates (and whether independent contractors are included) are counted for purposes of the employee count.



- Who is responsible for payment of weekly coronavirus testing and how frequently must employees/workers be tested each week? We request that workers be responsible for covering weekly coronavirus testing. We also request the rule provide clarity that employees who opt for weekly coronavirus testing, as opposed to a vaccine, must obtain the testing on their own personal time, not during business hours.
- How will businesses monitor employee compliance? We ask that the rule clearly explain record-keeping requirements for employers and include a list of acceptable documents employees may use to prove vaccination status.
- Are employers responsible for employee compliance as it relates to booster shots? If so, we ask that the rule clearly state the timeframe for an employee to receive their booster shot.
- In addition to the vaccine mandate, will employers be responsible for other mitigation measures, including, but not limited to, temperature checks, social distancing, mask wearing, quarantines, and ongoing contact tracing?
- How should employers manage or assess vaccine exemption requests from employees? We ask that the rule be detailed in providing the scope of accommodations businesses must provide as an alternative to vaccination and be clear that weekly testing is the only accommodation that an employer must provide to a vaccine mandate.
- How will employers handle workers who receive a religious or medical exemption? We ask that the rule provide clarity on what qualifies for a religious exemption and what support an employer can request to confirm medical exemption from the vaccine requirement.
- We ask that the rule clearly state that there is no exemption (religious or medical) for the weekly testing alternative and that the testing alternative is THE accommodation.
- We ask that the rule clearly states the disciplinary measures businesses may take against workers for non-compliance with the vaccine mandate or weekly testing requirement.
- How must an employer accommodate an employee that is unable to get the vaccine? For example, we request that the rule be clear that the employer is not required to provide such employees the ability to work permanently off-site, and that the rule be clear on how employers must accommodate or treat unvaccinated employees who come into the office, including whether an employer may require unvaccinated workers to work in a separate area away from other workers and adhere to different requirements, such as mask wearing, than vaccinated employees?
- We ask that the rule clearly state that employers will not be liable for employees who refuse to get the vaccine but contract the virus in the course of their job.
- What is an employer's responsibility with respect to outside workers and guests that come on work sites – must they verify vaccination status or require testing?
- Will employers be required to provide additional paid time off (PTO) to employees to recover, if necessary, after receiving each dose of the vaccine? Are employers required to give additional and dedicated PTO to get the vaccine and any booster? Or is employer provided sick leave enough? We ask that the rule clarify that if a business provides sick leave or PTO to employees that the employer is not required to provide any additional sick leave or PTO under these circumstances.
- Will the rule provide guidance on how employers should manage breakthrough infections in workplaces, including whether employers should follow current Centers for Disease Control (CDC) guidance?

A rule that clearly addresses each of the questions and concerns is greatly appreciated. Providing employers with greater clarity and certainty will be helpful as the business community works to ensure the health and safety of workers, while also managing the ongoing challenges of the pandemic.

Unfortunately, we are not able to offer data or statistics regarding infection rates within the real estate industry throughout the pandemic. However, we have developed and shared the [Coronavirus Guide for REALTORS®](#) with NAR members, industry leaders, and stakeholders to help keep real estate professionals, families, and consumers safe throughout the pandemic. We also advise our members to observe applicable federal, state, and local guidance in their business practices to ensure safety for all.

Thank you again for taking the time to hear the concerns of REALTORS®. We appreciate your consideration and work to ensure safe workplaces for real estate professionals and all workers. If you have additional questions or comments, please feel free to reach out to NAR's Senior Policy Representative, Nia Duggins at NDuggins@NAR.REALTOR or at 202-383-1085.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Oppler", with a long horizontal flourish extending to the right.

Charlie Oppler
2021 President, National Association of REALTORS®