



PLATINUM GROUP  
CLOUD PAYROLL | HR | ACCOUNTING

# Webinar 17

*Employer Updates 11-12-2021*

# Platinum Group

Webinar-November 12, 2021

## COVID-19 WEBINAR 17

OSHA's 11.4.21 Vaccine Mandate  
SBA Updates  
Employee Retention Credit (ERC) Updates  
11.12.21



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## Platinum Group

Webinar November 12, 2021

### AGENDA

- **OSHA's 11-04-2021 Vaccine Mandate**
- **SBA Economic Injury Disaster Loan (EIDL) Update**
- **Employee Retention Credit (ERC) Update**

# COVID-19 Employment Law Update

Platinum Group  
November 12, 2021

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LAW FIRM

# OSHA Emergency Temporary Standard

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- Effective November 5, 2021
- Implemented under special regulatory authority where employees are exposed to “grave danger” in workplace
- Preempts state and local requirements related to vaccines

# OSHA Emergency Temporary Standard

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- Applies to employers with a total of 100 or more employees at any time during the ETS, except:
  - Federal contractors
  - Employers subject to the prior Healthcare ETS
    - “Where any employees provides healthcare services or healthcare support services”
  - Employers subject to CMS Rule

# OSHA Emergency Temporary Standard

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- Does not apply to employees of covered employers:
  - Who do not report to a workplace where other individuals such as coworkers or customers are present
  - While working from home
  - Who work exclusively outdoors
- What about employees who ride in vehicles with others?



# OSHA Emergency Temporary Standard

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- Must establish, implement, and enforce a “mandatory vaccination policy”
  - In writing
  - All employees must be fully vaccinated unless:
    - Medically contraindicated
    - Medical necessity requires delay in vaccination
    - Legally entitled to reasonable accommodation for disability or religious belief
- “Fully vaccinated” = received both doses + 2 weeks





# OSHA Emergency Temporary Standard

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- Only exempted from mandatory vaccination policy if have a written policy requiring unvaccinated employee to:
  - Provide proof of regular testing for COVID-19
  - Wear a face covering
- Regular testing for employee who reports at least once every 7 days:
  - Tested every 7 days
  - Provide documentation of test result no later than 7<sup>th</sup> day following date last provided result
- If do not report 7 or more days:
  - Tested within 7 days prior to returning to workplace
  - Provide documentation upon return

# OSHA Emergency Temporary Standard

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- Acceptable COVID-19 test
  - PCR test or antigen
  - Cannot be both self-administered and self-read by employee unless observed by employer or authorized telehealth proctor
  - Administered according to instructions
- ETS does not require employer to pay for test but may be required under other laws
  - Reasonable accommodation
  - Collective bargaining agreement

# OSHA Emergency Temporary Standard

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- Must keep test results while ETS in effect
  - Confidential medical record
- If no documentation of test, cannot allow employee into workplace
- Cannot require testing for 90 days following positive test result

# OSHA Emergency Temporary Standard

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- Acceptable face covering
  - Covers nose and mouth
    - Two or more layers of tightly woven fabric
    - Secured to head with ties, ear loops, or elastic bands
    - Fit snugly
    - Solid material (no slits, valves, holes, etc.)
- Includes clear face coverings or face shields
- Gaiters must have two layers or be folded to make two layers
- ETS does not require employer to pay for face covering



# OSHA Emergency Temporary Standard

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- Must require unvaccinated employee to wear face covering when indoors or when riding in a vehicle with someone else, except:
  - When employee is alone in a room with floor to ceiling walls + closed door
  - For limited time while eating and drinking
  - For identification purposes (security)
  - When wearing respirator
  - When use of face covering is infeasible or causes greater hazard



# OSHA Emergency Temporary Standard

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- Must determine vaccination status of employee
- Acceptable proof of vaccination:
  - Record of immunization from healthcare provider or pharmacy
  - COVID-19 Vaccine Card
  - Medical records
  - Immunization record from public health information system
- Only if employee cannot produce proof, signed and dated statement attesting:
  - Vaccination status
  - Have lost or cannot produce proof
  - True and accurate
  - Knowingly providing false information = criminal penalties
  - Should include information about type of vaccine, etc.

# OSHA Emergency Temporary Standard

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- Must maintain record of vaccination status
- Must maintain roster of each employee's vaccine status
- Confidential medical record
- Must be maintained while ETS is in effect
- If have ascertained status prior to ETS through another form of attestation or proof, exempt from ETS requirements for fully vaccinated employees if documented

# OSHA Emergency Temporary Standard

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- Must provide time for vaccination:
  - Reasonable amount of time for each dose
  - Up to 4 hours of paid time (including travel time) at employee's regular rate
- Must provide time for recovery:
  - Reasonable amount of time to recover after vaccine
  - Paid sick leave to recover from side effects





# OSHA Emergency Temporary Standard

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- Must provide information to employees:
  - Requirements of ETS
  - Employer policy
  - “Key Things to Know About COVID-19 Vaccine” (CDC)
  - Prohibition against discrimination or retaliation against employee for making OSHA report or exercising rights
  - Criminal penalties related to false vaccine documentation

# OSHA Emergency Temporary Standard

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- Must report work-related COVID-19 fatality within 8 hours of learning
- Must report work-related COVID-19 hospitalization within 24 hours of learning
- By end of next business day after request, provide employee:
  - Vaccine documentation or test results for employee
  - Aggregate number of fully vaccinated employees + total number of employees
- Within 4 business hours, provide OSHA with written policy
- By end of next business day, provide OSHA any other records

# Questions?

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### ECONOMIC INJURY DISASTER RECOVERY LOAN (EIDL)

#### Program Updates:

- Maximum loan cap increased from \$500,000 to \$2 million
- Use of funds was expanded to include payment and pre-payment of business non-federal debt incurred at any time (past or future) and payment of federal debt
- Extend the deferment period to 24 months from origination for all loans (existing loans with a less than 24-month deferment will be adjusted)

Please select the following link for a comprehensive list of changes [COVID EIDL Program Updates](#)

- Discusses term changes, qualification requirements and allowable uses of loan proceeds
- Application details and required documents

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### EMPLOYEE RETENTION CREDIT

**Eligibility - To be eligible for the ERC, an employer must meet at least one of the following eligibility tests:**

- The employer's operations were fully or partially suspended due to a governmental order related to COVID-19 (available only for suspension period); or
- For 2020 - The employer incurred a decline in gross receipts of greater than 50% during a calendar quarter compared to the same calendar quarter during 2019.
- For 2021 - The employer incurred a decline in gross receipts of greater than 20% during a calendar quarter compared to the same calendar quarter during 2019.

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### EMPLOYEE RETENTION CREDIT

#### How much is the credit?

	<u>2020</u> 03/13/20 -12/31/2020	<u>2021</u> 01/01/2021 – 09/30/2021*
Co-exist with a PPP Loan?	Yes, but cannot use the same wages.	Yes, but cannot use the same wages.
Eligible Compensation Base	\$10,000/ <u>year</u> /employee	\$10,000/ <u>quarter</u> /employee
Rate of Credit	50%	70%
Maximum amount of credit	\$5,000/year/employee	\$7,000/quarter/employee
Maximum amount of credit per year	\$5,000/year/employee	*\$21,000/year/employee
		*Changed due to passage of Infrastructure Bill – previously 12/31/2021 - President to sign.

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# Thank you!

Future Webinars will be scheduled based on new guidance

Invitations will be sent

**Recordings and presentation slides will be sent out this afternoon.**

**This presentation is based on information available on November 11, 2021**

**and is subject to change.**