



PIH

OFFICE OF PUBLIC & INDIAN HOUSING

Frequently Asked Questions for Public Housing Agencies (PHAs) Related to the COVID-19 Vaccination Executive Orders and OSHA's Emergency Temporary Standard (ETS)

November 24, 2021

Background

On September 9, 2021, President Biden signed two Executive Orders in support of his COVID-19 Action Plan. The first Executive Order required the Safer Federal Workforce Task Force to issue guidance mandating certain COVID-19 safety protocols for federal contractors and subcontractors. The second Executive Order required vaccination for federal employees. Additionally, President Biden announced that he has directed the Department of Labor's Occupational Safety & Health Administration (OSHA) to develop a rule mandating vaccination or weekly testing for employers with 100 or more employees. OSHA has issued an Emergency Temporary Standard (ETS) to minimize the risk of COVID-19 transmission in the workplace. The ETS establishes binding requirements to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID-19 in the workplace.

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, published on November 5, 2021 (86 Fed. Reg. 61402) ("ETS"). The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation.

For more information on the Executive Orders and OSHA's ETS, you may visit:

- [Executive Order 14042: Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)
- [Executive Order 14043: Requiring Coronavirus Disease 2019 Vaccination for Federal Employees](#)
- [OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard webpage](#)

Frequently Asked Questions

Q1. Does HUD consider a PHA to be a "contractor" for purposes of the federal vaccine mandate for federal contractors?

A. The Executive Order requiring federal contractors to be vaccinated does not apply to PHAs' administration of the Public Housing and Housing Choice Voucher (HCV) programs. PHAs are not considered contractors under these programs. The relationship between HUD and a PHA under these programs is a grantee relationship. The Public Housing and HCV Annual Contributions Contracts (ACC) are not procurement contracts and were not awarded pursuant to the Presidents' procurement authority. However, for PHAs that are administrators under the Performance-Based Annual Contributions Contract (PBCA-ACC) for the Project Based Voucher (PBV) program, the Executive Order does apply. HUD has determined that while the PBCA-ACC is a contract by order of a federal circuit court, the Executive Order will not be effectuated now but will be made applicable when the next contract is let, consistent with Federal Acquisition Regulations (FAR).

Q2. Can PHAs require residents to be vaccinated?

A. No, PHAs cannot require tenants to be vaccinated.

Q3. Are PHAs with 100 or more employees subject to the OSHA employer mandate?

A. As stated in the Background section above, on November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS). Please visit OSHA's web site at <https://www.osha.gov/coronavirus/ets2> for updates.

If OSHA's ETS is implemented, then PHAs with 100 or more employees are likely to be subject to the ETS, to the extent they are already subject to OSHA requirements. Questions regarding OSHA requirements should be presented to OSHA. Contacts are provided in OSHA's Federal Register notice: [COVID-19 Vaccination and Testing; Emergency Temporary Standard](#).

Q4. Can a PHA not covered by the OSHA employer mandate choose to implement a vaccine mandate for employees?

A. Subject to state and local law, if a PHA chooses to implement such a mandate, then the following resources may be helpful:

- [PIH Guidance for Public Housing Authorities \(PHAs\) on Supporting Access to COVID-19 Vaccinations for Residents and Staff](#)
- [U.S. Equal Employment Opportunity Commission \(EEOC\)'s What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)