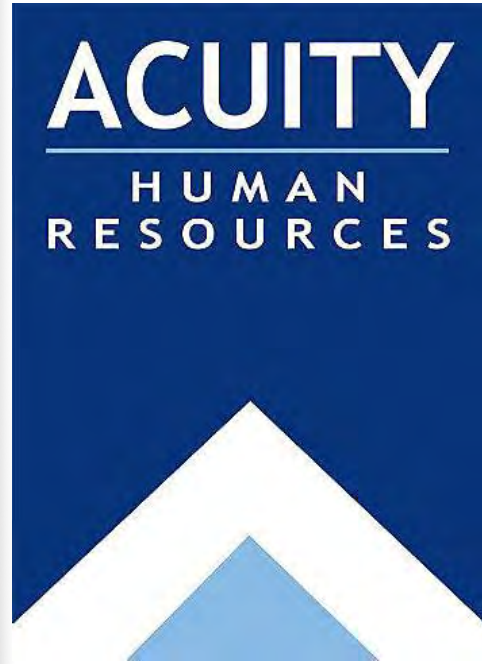




Your Irreplaceable Workforce Management Partner

Today's Presenters:



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Today's Roadmap:

OSHA ETS

- Where do we stand with the courts – SCOTUS HEARING TODAY
- Take these steps now. (30,000 foot view)
- Compliance Details
- Determining 100 headcount and strategies
- Who counts as an employee?
- What COVID test do you use?
- Testing Strategies
- Vaccine vs. Testing
- Vaccine Policy Strategies

Allegheny County Paid Sick Leave Ordinance

- Covered Employers
- Covered Employees
- Accrual rate and Timing
- Rate of Pay
- Reasons for Use
- Definition of Family Member
- Employee Notice
- Increments for Leave and Documentation
- Existing PTO/Vacation/Sick Time/CBA
- FMLA and City of Pittsburgh leave law interactions
- Enforcement and Anti-retaliation

OSHA Emergency Temporary Standard (Vaccine Rule):

Showdown at the U.S. Supreme Court TODAY

- Past court decisions that led to this point
- Expedited court schedule
- Refusal to issue emergency stay - will only consider stay request AFTER oral argument today.
- Prior Supreme Court stance on vaccination rules
- Crystal ball?
- Time “crunch” for employers – OSHA rule goes into effect MONDAY, with enforcement starting February 9, 2022.

What to do now:

Prior comprehensive seminar from CTR-if you'd like this seminar in full, please reach out to CTR (training@ctrhcm.com) or view CTR's resource library at <https://ctrhcm.com>. If you have any questions, feel to direct them to CTR Training or Acuity (floreak@acuity-hr.com).

Determine whether this applies to your company or not. (Generally 100 employee threshold).

Make the decision:

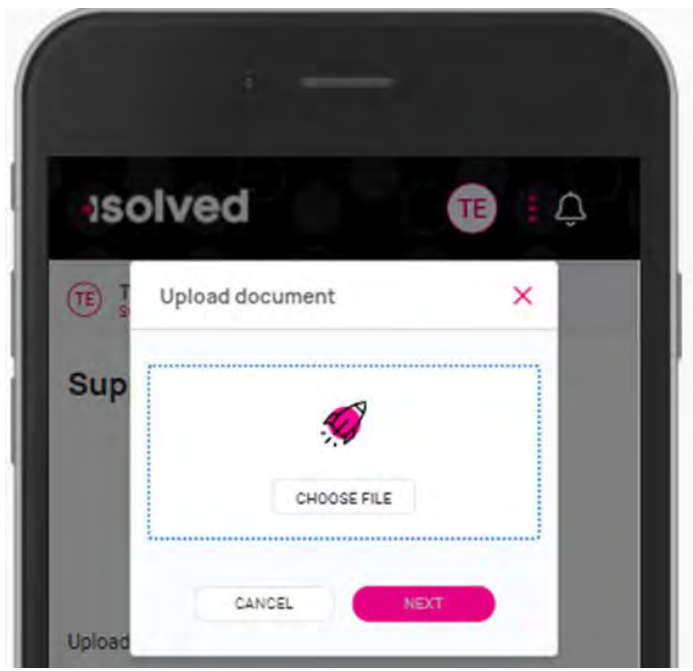
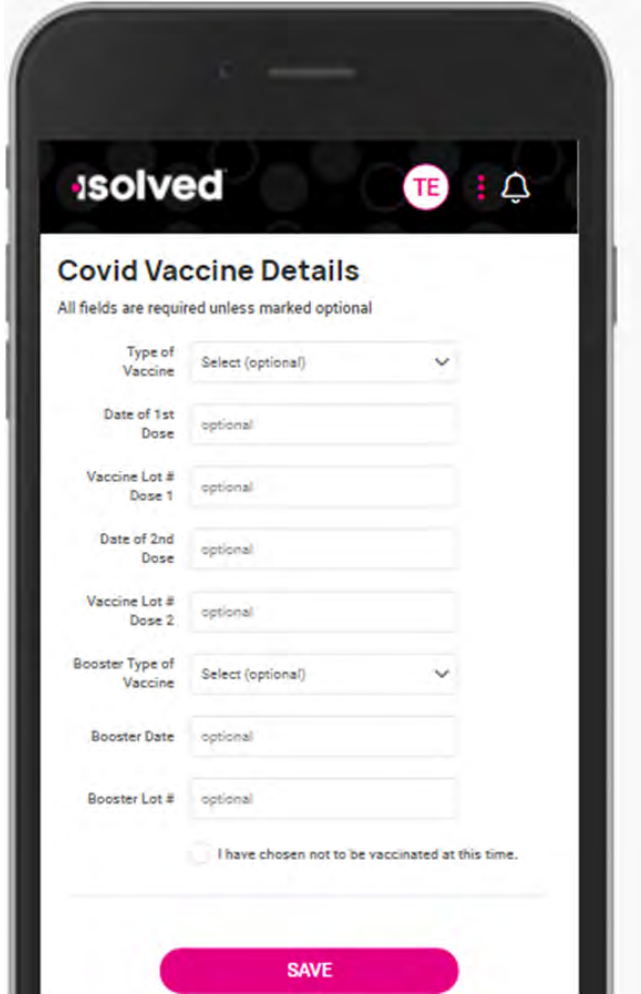
- Only vaccines? Vaccines and testing/masking option? Does it depend on job category? Testing/masking option only for certain individuals (medical/religious exemptions).
 - Know the “cost” in terms of attrition/hiring and testing.
- Have a written policy ready to go – ideally by January 10th, but if no stay absolutely by Feb. 9th.
- Have a Vaccine Tracking Plan ready to go-CTR is ready to help!

How can CTR help?



Vaccine Tracking via CTR's Paperless Onboarding

As a CTR Onboarding customer, you have the ability to include vaccine tracking for your new hires. New hires can submit their COVID-19 vaccine information as well as upload a copy of their COVID-19 card.



If you are interested in adding CTR's paperless onboarding, please e-mail jason.simmons@ctrhcm.com

How can CTR help?



Vaccine Tracking, Testing Tracking & Document Upload

For your current employees, CTR can also help assist with tracking COVID-19 vaccines, COVID-19 testing and copies of employee COVID-19 vaccine cards. This can all be done through Employee Self-Service.

Covid Vaccine

Type of Vaccine : Pfizer
Date of 1st Dose : 1/10/2021
Vaccine Lot # Dose 1: EL3300
Date of 2nd Dose : 1/26/2021
Vaccine Lot # Dose 2: EL8900
Booster Type of Vaccine : Pfizer
Booster Date : 8/13/2021
Booster Lot # : EW0170
 I have chosen not to be vaccinated at this time.

Add New

* Category: EE Uploads
Subcategory: COVID-19 Vaccine Card
* Document Type: EE Uploads
Description: COVID-19 Vaccine Card
* Upload File: []

Employee Name	Type of Vaccine	Date of 1st Dose	Vaccine Lot # Dose 1	Date of 2nd Dose	Vaccine Lot # Dose 2	Booster Type of Vaccine	Booster Date	Booster Lot #	I have chosen not to be vaccinated
Employee, Test	Pfizer	1/10/2021	EL3300	1/26/2021	EL8900	Pfizer	8/13/2021	EW0170	No

If you are interested in CTR helping to set this up for your organization, please e-mail HR/Benefits team at ctrhcmsupport-benefits@ctrhcm.com.

WHEN does a business determine if it has a 100 or more employees?

Example 1:

ABC Corp. has a steady headcount of 150 employees.

- * **November 5, 2021 – key date**

- * Will remain subject to the ETS until the ETS end date – at least 6 months from Nov. 5.

- * Compliance date of ETS is January 10, 2022; enforcement February 9, 2022.

Example 2:

ABC Corp. only had 90 employees on November 5, 2021. But, ABC Corp., experiences increased business over the holiday season. It adds 30 employees on “Black Friday,” November 26, 2021. That will bring the total up to 120 employees.

- * Not covered by the ETS on November 5.

- * Will become covered by ETS on November 26, 2021.

Example 3:

ABC Corp. has 150 employees on November 5, 2021. Holiday sales slump. It terminates 60 employees on January 15, 2022.

- * Covered by ETS on November 5, 2021
- * Reduction in employee headcount does **NOT** matter. Employer remains covered by ETS.

Example 4:

ABC Corp. has 90 employees on November 5, 2021. ABC Corp. experiences growth and starts hiring after the holidays. On January 31, 2021, it hits 100 employees.

- * Not covered by ETS on November 5, 2021, December 5, 2021 or January 4, 2021
- * Covered by ETS effective January 31, 2021. (If ABC's headcount drops below 100, after this date, it does not matter – it will remain covered by the ETS.)

Example 5:

ABC Corp. is owned by Joe. DEF Corp. is owned by Joe's spouse. GHI Corp. is owned by Joe and his son. Each company has 50 employees. Are any of the companies covered by ETS?

- IRS Control Group Rules?
- DOL Related Entities test?

Potential Headcount Strategy:

- If an employer was not at 100 employees on November 5, 2021, but is very close; consider whether additional hires (particularly temporary seasonal hires) are necessary.
- Is the company better off to require/offer overtime to existing employees to avoid the 100 threshold? Or will this result in turnover in an already tight labor market?
- Can independent contractors or leased/staffing agency employees be utilized to help avoid the 100 threshold (be very careful about classification mistakes)?
- This may be a short-lived strategy, since OSHA is actively seeking public comment on whether or not it should extend the ETS to small (under 100) employers

WHO Counts as an employee?

Count:

- Full time
- Part time (each counts as one employee – not a “partial” count)
- Temporary/Seasonal
- Remote/At-home (possible strategy for some employers/groups)
- Outdoor employees
- Does NOT matter if they work at the same or different locations

Don't count (generally):

- Independent Contractors
- Leased/Staffing Agency Employee
- General/subcontractor employees at same worksite as company employees
- Franchises – only your franchise
- CRITICAL – be sure classifications are correct.

WHAT COVID test do you use?

- **PCR, rapid antigen or “at-home” tests?**

- Employer choice
- But consider PCR takes longer but is more accurate; rapid antigen seems most accurate for folks who show symptoms - this will be testing employees without symptoms.
 - NFL – Giants 12 false positives (out of 13); stopped using rapid tests (ESPN Nov. 5, 2021).

- **Location**

- For the PCR and rapid antigen – could be done anywhere (at worksite, at location of employee’s choice, at location of employer’s choice).
- “At-home” test – cannot be self-administered; must be observed by employer (or telehealth provider);
- Supply issues; distance issues

- **Day of the week**

- Employer choice – consider business needs and test turn around time

Testing strategies to consider:

- Not all employees need to have the same test
- Not all employees need to be tested on the same day.
- “Pooling” testing is permitted

Example: ABC Corp. has multiple divisions. The customer service division works 9-5 M-F at its headquarters. The trucking division delivers products over the weekend. The truckers are remote workers. ABC decides to test non-vaccinated customer service reps on Fridays with the “at-home” test at its HQ on Friday afternoons. ABC requires the truckers to be tested on Monday mornings at a location and type of testing of the truckers’ choosing.

IMPORTANT: If ABC is unionized, it likely has a bargaining obligation over the type, day, time, cost, etc. of these tests with its union. Check CBA and talk to labor counsel.

Vaccine vs. Testing:

Can ABC Corp. require that **ALL** employees just be vaccinated by January 10, 2022 and forget the testing option under the ETS?

Does it matter why ABC Corp. wants to mandate vaccines for all employees – whether it's due to convenience or because ABC Corp. has an honest belief that this is the safest and best option for all employees, clients, customers, etc.?

Note: ABC Corp is NOT a federal contractor/subcontractor and is not a healthcare entity. These employers are subject to rules that are more stringent than the ETS.

Short Answer: No. At a minimum, ABC will have to allow testing for employees who cannot medically receive the vaccine and, likely, have to allow testing for religious exemptions.

Vaccine Policy Strategies:

ABC Corp. (assuming no union) could require vaccines for all employees except those with medical/religious exemptions. However, in making this decision, ABC should evaluate:

- How competitive is its labor market? Will requiring vaccines be a hiring hinderance? Will it be a hiring help – if employees perceive the vaccine requirement to be keeping them “extra” safe?
- Does ABC employ minors? This is a significant issue. Most minors need parental consent for the vaccine. Can the employer get both the employed youth and mom/dad on board?
- Will requiring the vaccine cause a sudden explosion of medical and religious exemptions that the employer will have to sift through to determine legitimacy?

Who pays for testing?

- **NOT** the government (this testing is not done due to illness/symptoms)
- OSHA ETS says **NOT** the employer **BUT**:
 - Many states – including Pennsylvania – prohibit employers from requiring employees to pay for job-required medical tests unless required by law (but is this required? – the vaccine is required – testing is an option).
 - Question: Will Pennsylvania (other states) clarify/change their laws?
- Even if the state permits an employer to require the employee to pay for medical tests, many state wage payment laws – including Pennsylvania – will not allow the employer to make a payroll deduction for the test.
- FLSA overtime and minimum wage issue/state wage payment:
 - Testing cost should not drop employee below these thresholds
- Group Health Insurance? Probably not – not medically necessary.
- Will the cost of testing cause hiring/retention problems?

OSHA - Q&A

Allegheny County Paid Sick Leave Ordinance (“PSL”)

FAQs:

<https://www.alleghenycounty.us/administrative/paid-sick-leave-faqs.aspx>

Guidance:

https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Dept_-_Content/Administrative/Docs/Paid%20Sick%20Leave%20-%20Guidelines.pdf

Covered Employers:

Which employers are covered?

- Must have 26 or more employees with at least one spending some time in Allegheny Co.

How does an employer determine if it has 26 employees?

- For purposes of counting the “26” it does not matter where the employees are located.
 - Example: ABC Corp has 75 employees total. 70 employees work exclusively in Butler County. Only 5 employees are work in Allegheny County ABC Corp IS a covered employer under the PSL.
 - Example: ABC Corp is headquartered in Washington County and maintains its only office there. It has 100 employees. Because of the pandemic, ABC allows all employees to work from home. Two of the employees live in Allegheny County and the rest live in Washington County. The two employees in Allegheny County are remote workers. ABC IS covered by the PSL.
- It does not matter if the employees are part-time of full-time
 - Example: ABC Corp has thirty part-time employees, all of whom work in Allegheny County and who each work 20 hours a week. EACH part-time employee counts as “one” employee. They are not counted as “fractions” of employees. ABC IS covered by the PSL.

Covered Employers (con't):

- Owners are not counted.
 - Example: ABC Corp. has 25 employees and one owner. They are all in Allegheny County. ABC is NOT covered by the PSL.
- Multiple companies – with common ownership - generally do not aggregate employees.
 - County FAQ: **If an individual own multiple businesses in the County, must the individual consider all businesses as one consolidated entity for determining a count of Employees for determining the threshold of 26 or more employees requiring Paid Sick Time under the Ordinance?**
 - County Answer: **Not necessarily**. ... If an individual's assets include separate entities constituting multiple Employers, each Employer's Employees would be counted separately for purposes of compliance with the Ordinance.

Covered Employers (con't):

- Do not count independent contractors or Seasonal Employees.
 - Example: ABC Corp. has 20 employees in Allegheny County. It also utilizes the services of 10 independent contractors and 30 Seasonal Employees. ABC Corp. is NOT covered by the PSL.
- Critical Caveats:
 - Be certain that an independent contractor is an independent contractor and not a misclassified employee. If misclassified, the PSL will be the least of your worries.
 - Seasonal Employee must meet the definition found in the PSL.
 - Receives written notice of seasonality start/end dates at inception of employment; less than 16 weeks. Don't forget other labor laws – not a guarantee of employment.
 - Unanswered – employees from temporary agencies.

Covered Employees:

- Critical Concept: “Geographical Boundaries”
- Only employees that work 35 or more hours within Allegheny County’s “geographical boundaries” in a 12 month period are entitled to accrue or use PSL.
 - The 12 month period is set by the employer and need not be a calendar year. Consider FMLA implications – what is your FMLA year?
 - Example: Emily Employee works out of the Beaver County headquarters 4 days a week. Every Friday she works in ABC Corp.’s Allegheny County office. She works 8 hours a day. ONLY those hours worked in Allegheny County will count for accrual purposes.
 - Example: Butler County company has a delivery driver who works all over SWPA. Usually on Tuesday and Thursdays he spends 4 hours each morning in Allegheny County making deliveries. Only those 4 hours on the 2 separate days, will count. Consider how you track this. (Remember this employer is covered based on this intermittent contact, assuming it has 26 or more employees.)
 - Note: Truck drivers who drive through Allegheny County without any required stops, are not counted.

Accrual Rate/Timing:

- Current employees started accruing on 12/15/21 and can use 90 days later.
- New employees start accruing on date of hire.
 - New employees may be prohibited from using PSL until 90 days after inception of employment.
 - Consider how this compares with any probationary period you may have.
- Employees must work 35 hours to start accruing time. Time is accrued at one hour per every 35 hours worked up to 40 hours in a 12 month period.
 - Example: Delivery driver (remember him?) works in Allegheny County
- Hours (up to 40) carryover to next 12 month period but only 40 hours can accrue in any given 12 month period.
 - Incentive for employee to use them every 12 month period.
- Employer can always be more generous and offer more than 40 hours.
- Exempt employees are automatically presumed to work 40 hours a week.
- You can “front-load” hours. Give all 40 hours at the start of the 12 month period.
 - Simplifies recordkeeping
 - CAN do it for some and not others (within same category)

Rate of Pay:

- Generally the hourly wage or salary the employee typically earns with associated benefits.
- Tipped/Commission employees will not earn tips or commissions but must be paid at least minimum wage.
- Piece Rate. For a Covered Employee paid partially or wholly on a piece rate basis (i.e. - paid for each unit of production at a fixed rate), dividing the total earning by the total hours worked in the most recent work week in which the employee performed identical or substantially similar work to the work the employee would have performed had the employee not used Paid Sick Time.
- Fluctuating Pay. For an Employee whose hourly rate of pay fluctuates:
 - Where the Employer can identify the hourly rates of pay for which the Covered Employee was scheduled to have worked, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which Paid Sick Time is used.
 - Where the Employer cannot identify the hourly rates of pay which the Covered Employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current and preceding 30 days, whichever yields the higher hourly rate.

Reasons for Use:

- An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
- Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or
- Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

Definition of Family Member:

- A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis;
 - Critical caveat: “In loco parentis” - WHD Fact Sheet #28 (“The FMLA does not restrict the number of parents a child may have.”)
- A biological, foster, adoptive, or step-parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child;
- A person to whom the employee is legally married under the laws of any State;
- A grandparent or spouse or domestic partner of a grandparent;
- A grandchild;
- A biological, foster, or adopted sibling;
- A domestic partner;
- Any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request to make use of Sick Time.

Employee Notice of Need for Leave:

- Need a written policy.
- Cannot require written advance notice – verbal is sufficient.
- Foreseeable Leave:
 - No more than seven days in advance.
 - Employee must make a “reasonable effort” to schedule so as not to unduly interrupt employer operations.
- Unforeseeable Leave:
 - As soon as practical. Preferably one hour before shift start, if possible.

Increments for Leave:

An Employee may use accrued Paid Sick Time in the smaller of hourly increments or the smallest increment that the Employer's payroll system uses to account for absences or use of other time. Consider implications of FMLA which generally requires use in the smallest increment available under the timekeeping system (often 15 minutes).

Documentation:

Only if absence is longer than 3 days. Can only require generic notice and cannot require health condition specifics.

- No system to require clarification
- No system to challenge need for leave

Note that this does not affect FMLA certifications or the right to clarification/2nd or 3rd opinions.

Current PTO/Vacation/Sick/CBA policies:

Can be used to satisfy the PSL – BUT ensure that they encompass all of the reasons for leave and “family members” that could trigger a qualifying leave. These policies likely are not this broad. If you need to tweak your CBA leave provision, consult labor counsel.

FMLA/City of Pittsburgh Leave Law Interaction:

- City of Pittsburgh: In general, if you already comply with the City of Pittsburgh Leave Law, you will be complying with the PSL. You still need to post the County poster and count/document hours.
- FMLA is a different story.
 - “Reasons for Leave” are not as broad as the PSL. Neither is the definition of family member.
 - Likely to be “Catch 22” – if FMLA Certification is vague and needs clarification. You may have a situation where the individual qualifies for PSL but FMLA is challenged.
 - Example: Emmett Employee has 40 hours of PSL accrued. He goes out on leave. The leave is more than 3 days and the employer asks for a note. Emmett submits a note from a healthcare provider and it says he has a health condition and is entitled to leave. Emmett also submits an FMLA certification which says he should have leave of an “unknown duration” and that the length of the condition is “unknown.” The certification is from an express care provider. The employer challenges that certification (either through seeking clarification or second/third opinion.) FMLA may ultimately be denied but leave for PSL would be approved.

Enforcement/Retaliation:

- PSL went into effect on 12/15/21.
 - In particular, the County supplied poster must be displayed.
 - Timekeeping/accrual should already have started.
 - Company responsibility to keep time records that demonstrate accrual/use.
 - Must be available to employees.
 - CTR can help with this.
 - In the absence of such timekeeping, there is a presumption that the employer violated the PSL.
- NO enforcement penalties for one year.
 - \$100 per violation
- Prohibition on retaliation for use of PSL.
 - Watch the e-mails
 - Watch/train first-level supervisors
 - Consider whether EPLI provides any coverage

If you have any HR/policy questions re: Allegheny County Sick, please feel free to reach out to Acuity @ floreak@acuity-hr.com.

If you want to inquire about setting this up or adding this to your existing accrual policy in isolved, please contact your CTR Support Representative.



Thank you for attending!