



ANKENY
COMMUNITY SCHOOL DISTRICT

OSHA Vaccination & Testing Update

Presentation to the ACSD Board of Education
November 16, 2021

CURRENT AS OF NOVEMBER 16, 2021



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ETS Overview

OSHA issued an **Emergency Temporary Standard (ETS)** on COVID-19 Vaccination and Testing that establishes requirements for employers related to COVID-19 vaccination and/or testing.

Who is covered by the ETS: All employers with at least **100 employees** must implement a policy related to the ETS. The policy covers all **full-time, part-time, and temporary** (e.g., substitute) employees with limited exceptions.

What does the ETS require: All covered employers must have a policy that requires all covered employees to **either (1) be vaccinated for COVID-19 or (2) be vaccinated for COVID-19 or provide negative COVID tests weekly & wear face coverings.**

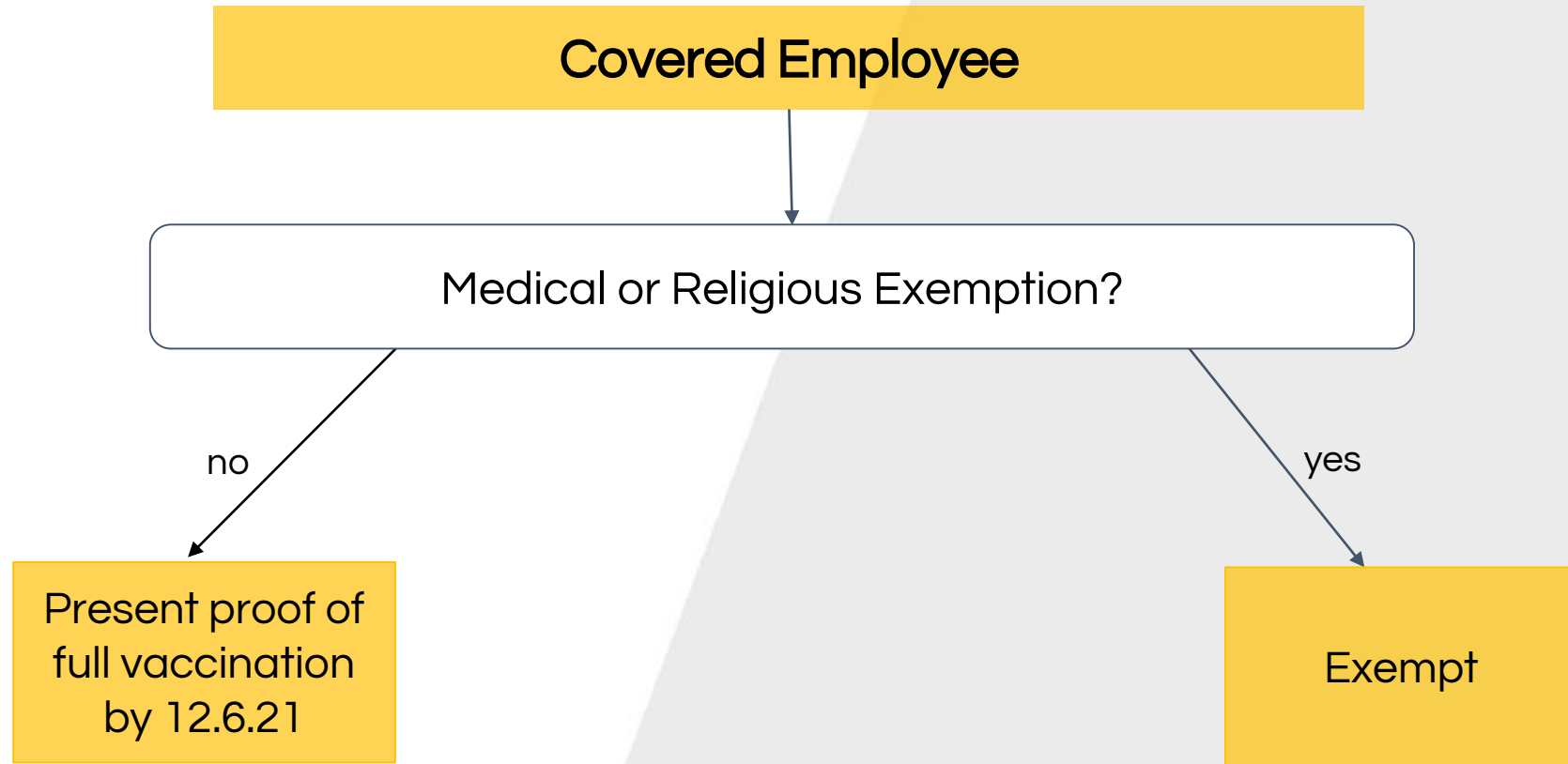
WHEN does the ETS take effect: Policy must be in place and proof of vaccination received by **December 6, 2021**. Employees testing instead of vaccinating must present initial test by **January 4, 2022**.

ETS Current Posture

- There are currently several federal cases challenging the ETS.
- November 16: a panel of federal judges will be chosen by lottery to **determine if the stay issued by the 5th Circuit applies to the entire U.S.** This determination will likely be made in a few days.
- If the stay is **determined to apply nationwide**: districts do not have to adopt ETS.
If the stay is **determined not to apply nationwide**: the ETS will be in effect in Iowa.

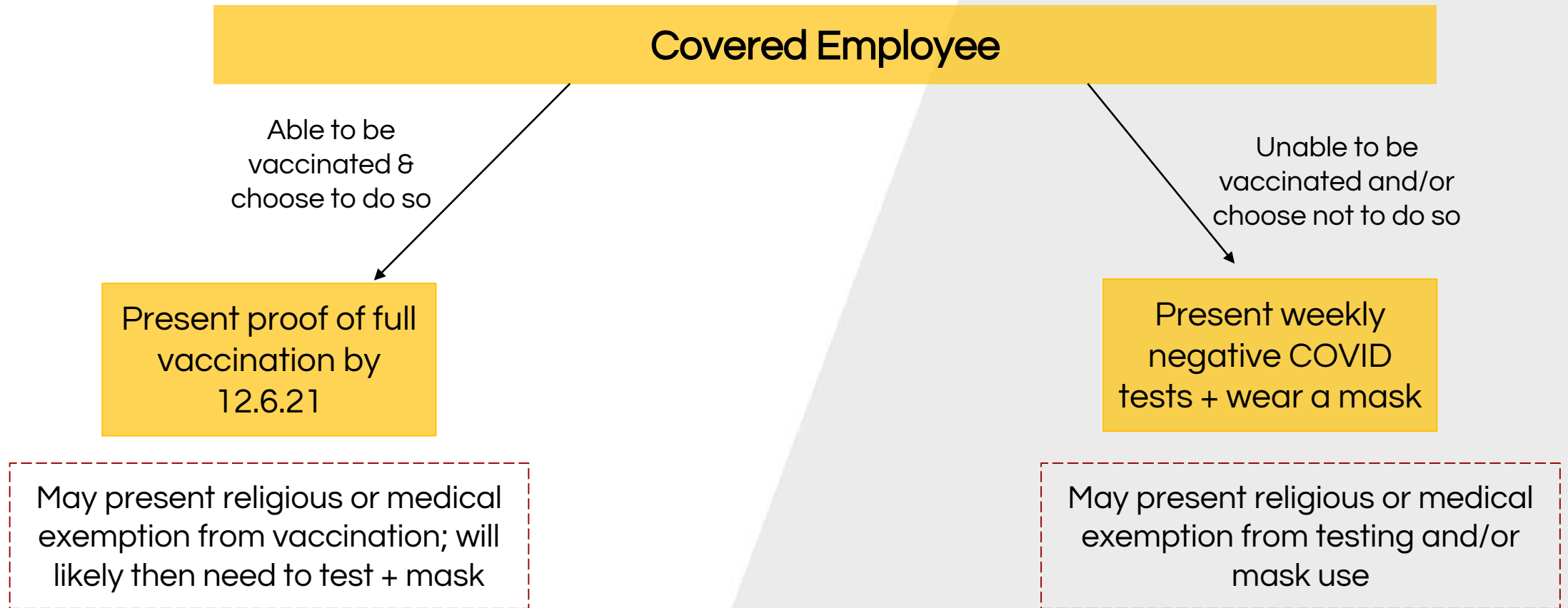


Option 1: Vaccinate Unless Exempt





Option 2: Vaccinate or Test





Vaccination Requirements

- **Approved vaccines:** Approved by FDA for emergency use (**Pfizer, Moderna, Johnson & Johnson**); approved by **WHO** for emergency use; non-placebo **clinical trial** vaccinations
- **Full vaccination:** Completion of **full one- or two-dose primary regiment** (boosters aren't required) + **2 week waiting period**
- **Acceptable proof of vaccination:** Vaccination **card, record** of immunization, **attestation** (only if unable to access other proof)
- **Cost of vaccination:** Currently, FDA-approved vaccinations are available **free of charge**
- **Time off related to vaccination:** Up to **two-hours** of paid leave per primary **vaccination dose**; up to **two days of sick leave** (if none available) for **recovery** from each primary vaccination dose; not retroactive.

Employees stay home if test positive, regardless of vaccination status.

Testing & Mask Requirements

- **Approved tests:** Cleared, approved, & authorized by FDA (e.g., viral test) administered as instructed and not both self-administered and self-read. Antibody tests are not approved.
- **Approved face coverings:** Completely covers and fits snugly over **nose and mouth** + two or more **layers** (gaiters are allowed if made “two-ply”) + **no slits, valves, or other openings**
- **Cost of testing:** **Employees** cover the cost of testing
- **Time off related to testing:** Time off will **not be provided specifically for testing**, but employees may choose to use relevant leave in their existing banks (e.g., personal, sick) to go to a testing appointment

Employees stay home if test positive, regardless of vaccination status.



Exemptions & Unique Situations

- **Exemptions** Exemptions from vaccination, testing, and/or mask wearing for **medical** and/or **religious** reasons will be considered; forms will be available to employees
- **Intermittent/employees on leave who are testing:** Employees who are testing and are **out of work for more than seven days** (e.g., subs, employees on leave) don't need to test weekly during time away, but do need to **present a negative test to return to work**
- **Testing Shortages:** ETS does not provide a "grace period," but the district may be able to provide **temporary accommodations in extraordinary circumstances**

Consequences of Non-Compliance

For Employees

Subject to any relevant exemptions, an employee will be **“removed from the workplace”** for failure to provide proof of vaccination or submit a current (within 7 days) negative COVID-19 test and wear an approved face covering.

Ongoing lack of compliance may result in **disciplinary action**, up to and including termination.

**The OSH Act offers whistleblower protection;
counsel has advised that this should be front-of-mind when moving toward implementation.**

For ACSD

OSHA has adopted its “egregious violation” policy for the ETS, which means it **may issue separate penalties for each instance** of non-compliance

Failure to enforce: up to **\$13,653** for each serious violation and up to **\$136,532** for a willful violation.



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Next Steps

Questions?