



AGC
THE CONSTRUCTION
ASSOCIATION

Preparing for the OSHA COVID-19 Vaccine Testing
Mandate Webinar Series

November 8, 2021

Leveraging Outside Solutions to Meet the Mandate

Thank You to Our Sponsor



THE CONSTRUCTION ADVOCACY FUND

ConstructionAdvocacyFund.agc.org

PANELISTS



- **Kevin Cannon**, Senior Director, Safety & Health Services, AGC of America
- **John Constantine**, CEO, ARCPoint Franchise Group
- **Reid Rubinstein**, CEO, Field Control Analytics
- **Lisa Howlett**, General Counsel, Hunter Roberts Construction Group

AGC VACCINATION BACKGROUND



- AGC has advocated for voluntary vaccinations
- Aligns with our safe workplaces strategies
- COVID vaccination toolkit on our website to assist members in discussing issue with employees
- Webinars with law firm explaining limitations on employer mandates/bargaining requirements
- Recognition that mandating vaccination may lead to widespread resignations in industry/balance with safe workplace responsibilities

OSHA VACCINE AND TESTING MANDATE FOR ALL EMPLOYERS WITH 100 OR MORE EMPLOYEES



- Nov. 5 OSHA issued [Emergency Temporary Standard](#)
 - December 6, 2021 for requirements other than testing for those who are not fully vaccinated
 - January 4, 2022 for testing of employees who have not received all doses required for vaccination.
- Will require vaccination **OR** regular testing for employees
- Will require employers to provide paid time off to get vaccinated or recover from any adverse effects
- This is really a **TESTING MANDATE**
- AGC advocating for truly temporary ETS. The need for such a testing mandate will diminish as vaccination rates increase and/or herd immunity is achieved.

CURRENT STATUS OF OSHA VACCINE AND TESTING MANDATE AND WHAT LIES AHEAD



- U.S. Court of Appeals for the Fifth Circuit in Louisiana issued a stay on Saturday
- Business and religious groups, advocacy organizations and several states, including Louisiana and Texas, filed a petition on Friday with the court
- Attorneys general in 11 states also filed a lawsuit on Friday
- Arguments focus on the purpose of the OSH Act which is protecting workplace safety and not addressing public health emergencies
- Currently, it is unclear what impact this will ultimately have on the ETS
- AGC is monitoring the situation and exploring options/opportunities to engage in similar efforts.

Introduction to ARCpoint

- National Third-Party Provider/ Administrator
 - Diagnostic Testing
 - Employment/Background Checks
 - Corporate Wellness Programs
 - Occupational Health, Clinical Services
- Certifications & Affiliations
 - CLIA
 - 49CFR
 - DATIA
 - SAPAA
- 125 Locations; National Presence

COVID-19 Experience

- Early Entry in COVID-19 Testing and Vaccination
 - April 2020
 - Individual and Businesses Clients
 - Experience Across Many Industries, Including Contracting, Construction
 - Serve Thousands of Clients; Administered Hundreds of Thousands of Tests
- Customized Solutions
 - In Lab & On-Site Concierge Services, 24 X 7
 - Individual Testing, Event Testing, Random Testing, Surveillance Testing
 - Variety of Testing Options

Proven Results

- We Keep Businesses Moving Forward and Let Them Focus On What Matters
- Example:
 - Company has productivity challenge due to COVID-19 or is mandated to vaccinate/test
 - Create a customized vaccination, surveillance testing, reporting program
 - Vaccinations provided in lab, at offices, on job sites
 - Weekly testing and/or periodic random covid Antigen testing also conducted in lab, at offices, on job sites
 - Targeted testing symptomatic employees
 - Outbreaks minimized or completely stopped due to surveillance testing program
 - Productivity increased

Tests

Test	Advantages	Challenges
Antibody Tests	Look for Antibodies Some Specific to Past Infection Others Better at Picking Up Antibodies from Vaccines	DOES NOT Satisfy OSHA ETS Mandate Requirements
Antigen (Lab/Prescription)	Fast Results: 10-15 min Less Expensive Than PCR Easy to Administer	Higher Risk of False Negatives (esp. if asymptomatic) Not as Universally Accepted Requires CLIA Waiver to Administer
Antigen (Home Kits/OTC)	Antigen Advantages Above Can Procure Independently Does Not Require CLIA Waiver Employee Can Self Administer	Antigen Challenges Above Potential Supply Chain Challenges Cannot be Self Administered and Self Read – Requires Authorized Proctor
PCR	Gold Standard for Viral Testing Widely Accepted Greater Accuracy	Results Take Longer: 1 Hour to 72 hours depending on method Requires Equipment to Process Most Expensive Option
Pooled Testing	Efficient Option for Large, Low Risk Groups Presumes Negative Results Batches Initial Sample	Results Take Longer: 1-5 days depending on the lab backlog and reflex process Individual Tests Required if Batch is Positive Costs More Than Antigen, Less Than PCR Testing

OSHA ETS Testing Requirements

- Tests Must Be:
 - Screening for SARS-CoV-2
 - Cleared, Approved or Authorized via an EUA by the FDA (a viral test)
 - Administered in accordance with Authorized Instructions
 - Cannot be Both Self-Administered and Self-Read Unless Observed by Employer or Authorized Proctor
 - Home/OTC Antigen Kits Do Not Require CLIA Waiver or Prescription
 - Lab/Prescription/Standard Antigen Tests Require a CLIA waiver
 - PCR Tests Require a Prescription/Medical Oversight
- Authorized Proctors Include:
 - Licensed Healthcare Providers
 - Point-of-Care Test Providers
 - TeleHealth Providers

Partnership Benefits

- Customized Solutions
 - Right Test at the Right Time, in the Right Place
 - Right Program at the Right Budget
 - Unbiased, Non-Discriminatory, Purpose-Driven
- Proven Expertise
 - Professionally-Trained Collection and Diagnostics
 - Appropriately Certified and Compliant (CLIA, HIPAA)
 - Medical Review, Support, Testimony as Needed
- Worry Free
 - Procurement, Supply Chain Management
 - Documentation, Record-Keeping, Reporting, Communication
 - You Focus On Your Business; We've Got it Covered!

Helpful Links

- **OSHA ETSA Home Page:** <https://www.osha.gov/coronavirus/ets>
- **OSHA Webinar:** <https://www.youtube.com/watch?v=ixxkn3Y8z6g>
- **OSHA FAQ:** <https://www.osha.gov/coronavirus/ets2/faqs>
- **Link to State Plans:** <https://www.osha.gov/stateplans/>
- **Registration for ARCpoint Webinar and/or White Paper:**
(features medical, testing, legal experts)





Field
Control
Analytics

COVID-19 VAX Tracker

COVID-19 VAX Tracker presented by FCA

- Fast, reliable and efficient way to enter, keep and track all the vaccination data of your employees in one place
- Track vaccination status, type, date and expiration date
- Booster notifications based on vaccination type
- Accessible using web-app via any device
- On demand reports
- Role/permission configurations

Covid VAX Tracker

Covid Tracking

Reports

Admin

Superuser

Import

Logout

Total Records: 9478

Page Size: 10

Filter:

Rubenstein, Reid

Page 1 of 948

	Last Name	First Name	EEID	Unique Identifier	BU	Profit Center	Is Fully Vaccinated	Vaccine Type	Attestation	Exemption Status
<input type="checkbox"/>	Summers	James	758560	Summers0409	New York City	200568	No			
<input type="checkbox"/>	Jones	Derek	712689	Jones0308	New York City	200568	No			
<input type="checkbox"/>	Gibson	Leslie	712644	Gibson1108	Charlotte	201417	No			
<input type="checkbox"/>	Lawrence	Sean	736582	Lawrence0103	New York City	200568	No			
<input type="checkbox"/>	Cook	Robert	610259	Cook0805	Charlotte	201417	No			
<input type="checkbox"/>	Lopez	Mathew	703409	Lopez0131	Dallas	205213	No			
<input type="checkbox"/>	Mason	Neal	112456	Mason0312	Dallas	205213	No			
<input type="checkbox"/>	Griffin	David	122547	Griffin0722	Dallas	205213	No			
<input type="checkbox"/>	Jonson	Sam	620458	Jonson0924	Charlotte	201417	No			
<input type="checkbox"/>	Smith	Andrew	356987	Smith0111	New York City	200568	No			



Covid VAX Tracker

[Covid Tracking](#)[Reports](#)[Admin](#)[Superuser](#)[Import](#)[Logout](#)

Rubenstein, Reid

Language *

English



Employee ID:

745268

Unique Identifier (last name + birth month and day) *

Bowman0412

First Name *

David

Last Name *

Bowman

Middle Initial:

Save

Clear

Back

Delete





Covid VAX Tracker

[Covid Tracking](#)[Reports](#)[Admin](#)[Superuser](#)[Import](#)[Logout](#)

Rubenstein, Reid

Cell Phone:

Business Unit *

Profit Center *

I have received my vaccination: ☐

I am unvaccinated and plan to get vaccinated in the future: ☐

I am unvaccinated and do not plan to get vaccinated in the future: ☐

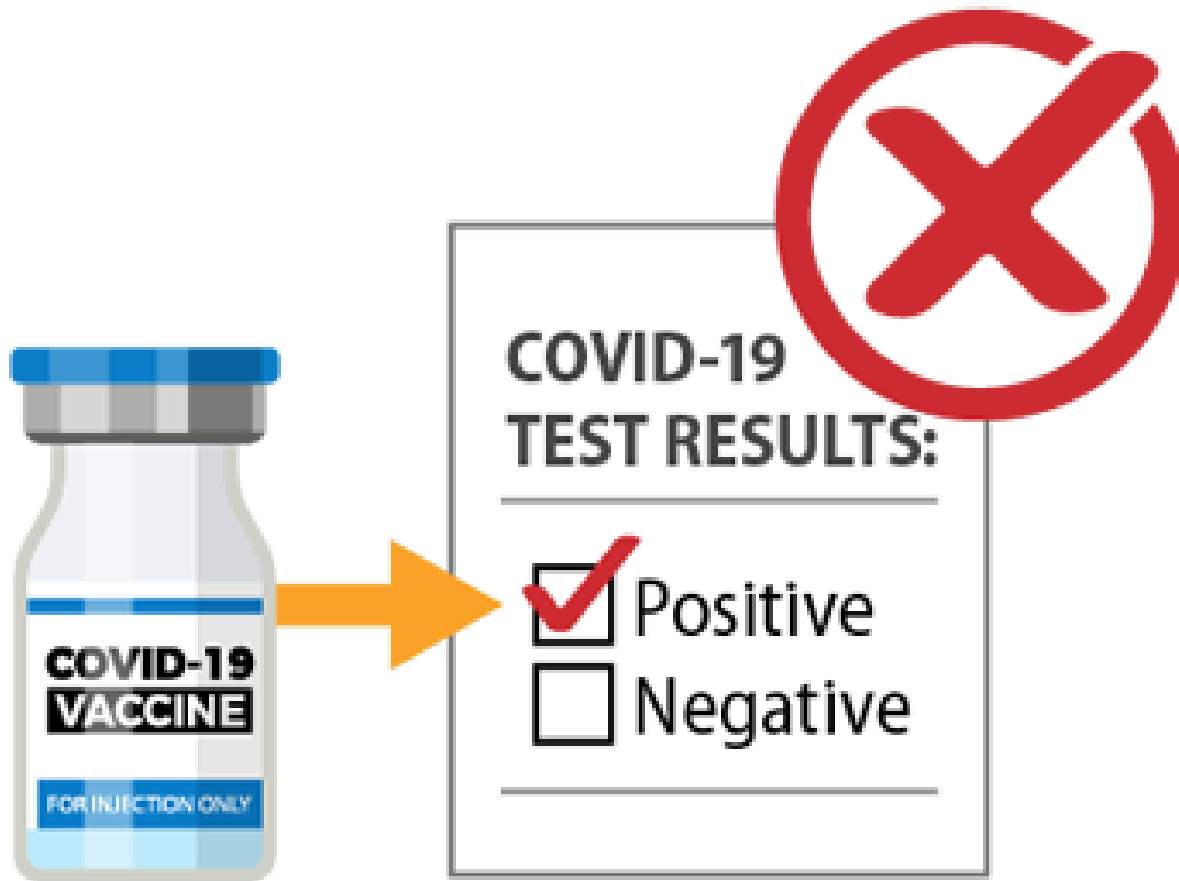
I am unvaccinated and plan to request a medical or religious exemption: ☐

[Save](#)[Clear](#)[Back](#)[Delete](#)



**Field
Control
Analytics**

Thank You.

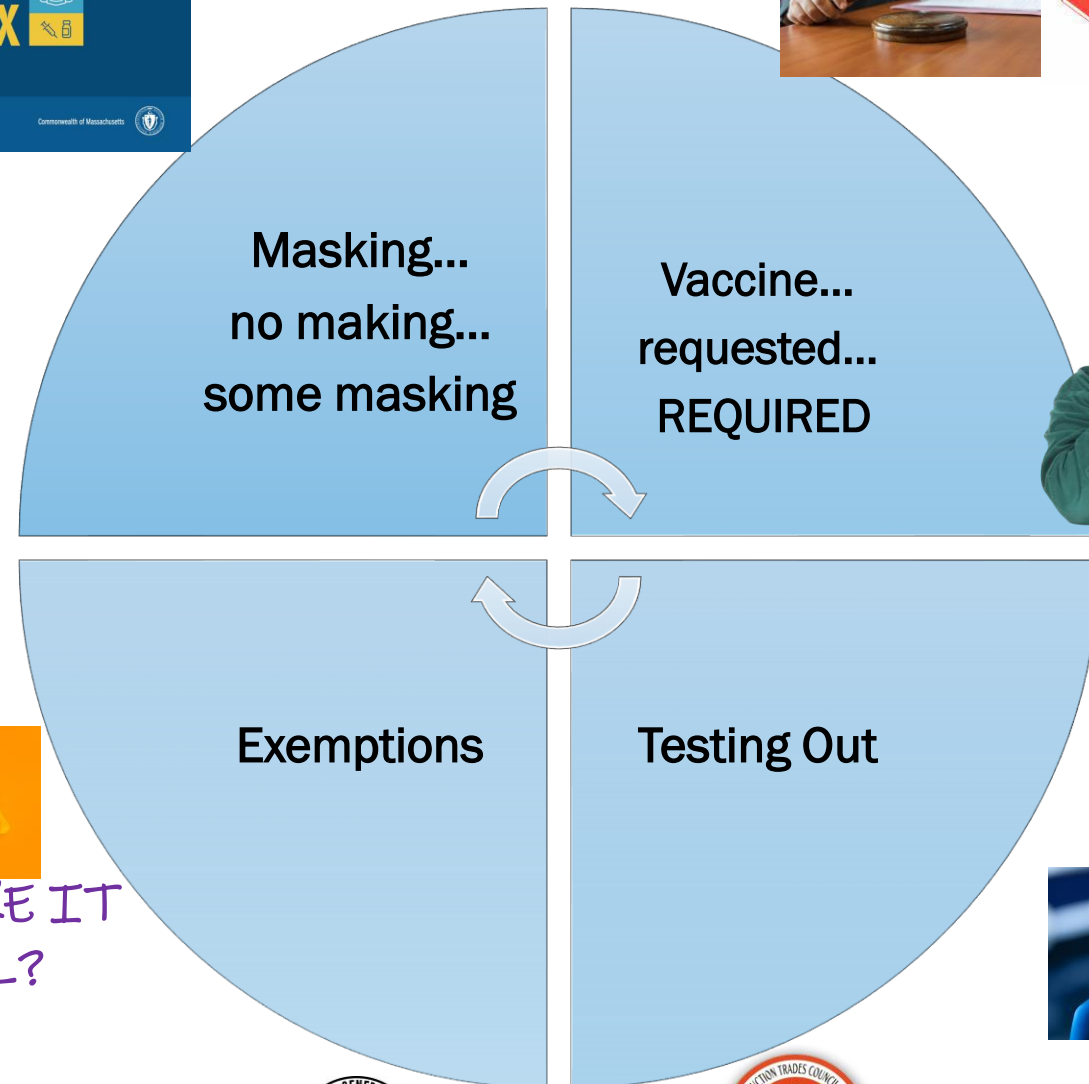


**HUNTER
ROBERTS
CONSTRUCTION
GROUP**

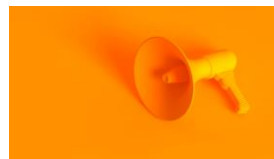
**VACCINE &
TESTING
MANDATES**

The following is not legal advice, and no attorney-client relationship is created by this presentation. The views expressed are those of this presenter in her individual capacity; liability expressly disclaimed.

ESSENTIAL LEADERSHIP AND CLEAR DIRECTION



Covid Fatigue



PSA - MAKE IT
PERSONAL?




BLOCKING AND TACKLING

Vaccines

- Timing – Status Survey, Advance Planning
- Onsite vs Worker Chosen Provider (control)
- Exemptions – where permitted
- Boosters – not for OSHA, but private clients?
Others?

BLOCKING AND TACKLING Vaccines

- Acceptable evidence
 - CDC Card
 - State/Locality Passes
 - Pharmacy QR
 - Doctor Records
 - Attestations – OSHA ETS (where employee unable to produce – lost stolen)
 - **Others -**  CLEAR[®]

BLOCKING AND TACKLING

Testing

- Type – Rapid, PCR, Self-administered/Self-read (unless observed)
- Onsite – Cost and Productivity Impacts
- Come Mondays showing with Negative Result to Enter
- Cost – Insurance, Escalation

BLOCKING AND TACKLING

Vaccine and Testing Records

- Record Requirements
 - OSHA ETS – “*The employer must retain either a physical or digital copy of the documentation.*”
- Confidential Medical Records Responsibilities
 - Maintenance
 - Employee Consent to Examination by Others
- Confirming Accuracy

BLOCKING AND TACKLING

Leveraging Resources to Monitor, Track and Report

- 3rd Party Providers
 - Testing
 - Tech – Analytics to Monitor Masking?
- Affirmations and Delegation to Trades (where permitted)
- Existing Resources
 - Human resources
 - On-site medics
 - Badging

QUESTIONS?