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# IBEW 1245

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BOB DEAN, BUSINESS MANAGER  
CECELIA DE LA TORRE, PRESIDENT

**COVID-19 Vaccination Testing: Emergency Temporary Standard  
Docket No. OSHA-2021-0007**

January 10, 2022

International Brotherhood of Electrical Workers, Local 1245 respectfully submits these comments regarding the Occupational Safety and Health Administration's ("OSHA") Emergency Temporary Standards for COVID-19 vaccination and testing in the workplace ("ETS"), published in the Federal Register on November 05, 2021.

We represent more than 25,000 energy workers in California and Nevada. Our members work for dozens of public and private sector employers across various industries, including construction, broadcasting, railroad, government, manufacturing, telecommunications, and utilities.

Given the nature of this work, most of our members spend a significant part of their working time outdoors, building and maintaining the power grid and other utilities. Many of our linemen and tree trimmers travel directly from their homes to their worksites for the day without stopping at an office or primary work location first. They also generally drive to the worksites alone, and then work exclusively outside, either alone or in small teams.

In order to address the working conditions of our members, as well as other workers in comparable situations, we respectfully request that OSHA consider the following modifications and clarifications to the ETS.

**Clarify the Testing Exceptions**

The ETS already acknowledge that employees who work alone or outdoors do not need to test:

*The requirements of this section do not apply to the employees of covered employers:*

- (i) *Who do not report to a workplace where other individuals such as coworkers or customers are present;*
- (ii) *While working from home; or*
- (iii) *Who work exclusively outdoors.*

(29 C.F.R. § 1910.501(b)(3).) As written, however, this language does not appear to provide the testing exception for employees who spend part of their workday alone in another location (such as in their vehicles), part of their workday outdoors, and part of their workday at home. Many of

our members start their day by preparing their work truck at home, and then driving alone in their vehicles to and from one or more outdoor worksites. Such a workday clearly avoids the risks intended to be addressed by the testing requirement. This provision should therefore be clarified to confirm that so long as a worker's work falls into any of the three enumerated categories for the entirety of the workday, the testing exception applies.

### **Eliminate The Testing Observation Requirement**

OSHA should eliminate the prohibition on tests that are “self-administered and self-read unless observed by the employer or an authorized telehealth proctor.” (29 C.F.R. § 1910.501(c).

Initially, forcing employees who work in remote areas, and who do not travel to a primary work location, to travel to additional locations for observed testing will impose costly requirements on employees and employers alike.

Second, OSHA's only cited reason for requiring in-person observation is potential employee dishonesty. (86 Fed. Reg. 61,402, 61,518 (Nov. 5, 2021) (“Due to the potential for employee misconduct ( e.g., falsified results), tests that are both self-administered and self-read are not acceptable unless they are observed by the employer or an authorized telehealth proctor.”).) However, OSHA relies on employee honesty in implementing other portions of the ETS. For example, employees can certify that they are vaccinated if they lose their proof of vaccination. (29 C.F.R. § 1910.501(e)(vi).) OSHA also permits employees to take at-home tests if the test is “processed by a laboratory,” even though the laboratory cannot confirm if the employee engaged in misconduct with respect to actually taking the test. (*Id.* at § 1910.501(c)(iii).) There is no rational basis to trust employees in those other circumstances and yet not with respect to this obligation.

Third, requiring in-person observation by the employer puts other workers in a situation where they are potentially increasing their risk to Covid-19 exposure by being in the same room as multiple unmasked employees on a weekly basis in order to perform the required observation.

Fourth, OSHA acknowledges that self-administered tests are less expensive and easier to administer, so in the interest of both employers and employees OSHA should encourage their use. (*See* Preamble to ETS, 86 Fed. Reg. 61,402, 61,451 (Nov. 5, 2021).)

At a minimum, and in the event that observation remains a requirement, OSHA should allow for observation by an employer to be either in-person or remote. However, not all employees have consistent access to the internet at home, making e-observation impossible. Moreover, and particularly for employees who work in remote areas where the internet is not stable, such as the impacted areas in which our members often are working to restore power and utilities, this option would be essentially unavailable. As such, OSHA should also provide viable options, consistent with the concerns detailed above, for employees who are unable to utilize remote observation.

### **Testing Should Not Be Required Before Reporting to Work to Address Public Infrastructure Emergencies**

The ETS require that “[a]n employee who reports at least once every 7 days to a workplace where other individuals such as coworkers or customers are present...[m]ust be tested for

COVID-19 at least once every 7 days,” and that “[a]n employee who does not report during a period of 7 or more days to a workplace where other individuals such as coworkers or customers are present (e.g., teleworking for two weeks prior to reporting to a workplace with others)...[m]ust be tested for COVID-19 within 7 days prior to returning to the workplace.” (29 C.F.R. §§ 1910.501(g)(1)(i) and (ii).)

These requirements could lead to delay in addressing public infrastructure emergencies such as downed power lines if an employee needs to comply with a testing requirement prior to reporting for work. As such, an exception should be included in the ETS to allow employees to report to work to address public infrastructure and other emergencies even if they otherwise would be due to be tested first, such as by allowing the employees to conduct the required testing as soon as reasonably possible after the emergency has been resolved.

### **Considerations For COVID-19 Test Supply Shortages**

Employees should not be prevented from working when it is impossible to comply with the ETS due to test supply shortages. The ETS should therefore include a safe harbor provision to address such situations.

### **Mandates Will Lead to Worker Shortages**

In the Spring 2021 Home Builder’s Institute Labor Market Report, fifty-two percent of builders reported a shortage of electrical workers.<sup>1</sup> It is likely that vaccine and testing mandates will further reduce the availability of electrical and telecommunications workers, and these reductions could lead to reduced construction capacity, slower responses to downed utility lines and other utility emergencies, and a general degradation of the nation’s electrical and telecommunications infrastructure.

Given these significant risks, OSHA should consider whether it makes sense to impose vaccine and testing mandates for workers in these critical roles – particularly given the low risk of exposure associated with the actual work, as detailed above.

On behalf of our members, thank you for considering these comments.



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<sup>1</sup> *The HBI Construction Labor Market Report Spring 2021*, <https://hbi.org/wp-content/uploads/HBI-Construction-Labor-Market-Report4.pdf> (last visited 1/2/2022).