

President Biden Sets Stage for Workplace Vaccination Game Changer

Alert

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On September 9, 2021, President Biden announced major actions intended to combat the spread of the COVID-19 pandemic called the [Path Out of the Pandemic](#) that will have a significant impact on employers across the country. While these initiatives will continue to develop, there are two major groups of employers who should begin making preparations for compliance now.

COMPANIES WITH 100 OR MORE EMPLOYEES

President Biden announced he has instructed the Occupational Safety and Health Administration (OSHA) to develop an emergency temporary standard to require companies with 100 or more employees to ensure their workforces are either fully vaccinated or test negative for COVID-19 at least once per week. Unlike existing [OSHA guidance](#) or information from the Centers for Disease Control and Prevention (CDC), which regularly issues non-binding guidance for employers and the general public, the OSHA standard is a binding regulation that can be enforced by the federal government. [According to the White House](#), under the anticipated OSHA standard, workers must also be given paid time off to get vaccinated and to recover from any side effects. Employers who do not comply with the rule could be subject to civil penalties of up to \$14,000 per violation or \$136,000 for willful or repeated violations.

The White House expects the rule to be published in the coming weeks and take effect shortly thereafter. An emergency temporary standard is a short-term standard (up to 180 days before a final standard is required) that may be issued when employees are exposed to grave danger of exposure to hazards and such a standard is necessary to protect employees. It may become effective upon publication in the *Federal Register* but often contains a short interim period before compliance is required. We are monitoring

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implementation of President Biden's initiatives and will provide more information once the details are released.

FEDERAL CONTRACTORS

In addition to the OSHA directive, President Biden issued the [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), which was promoted as requiring vaccinations for all employees of businesses that contract with the federal executive branch. The executive order requires executive departments and agencies to include in their contracts and contract-like instruments clauses mandating contractors and subcontractors to comply with all workplace safety guidelines published by the Safer Federal Workforce Task Force for the duration of the contract.

By September 24, 2021, the task force will publish definitions of relevant terms for contractors and subcontractors, explanations of the protocols required of contractors and subcontractors to comply with the workplace safety guidance, and any exceptions. Such workplace safety guidelines could include mandatory vaccinations for all employees of federal government contractors, but it is more likely that it will only apply to some employees of some government contractors. For example, the executive order takes immediate effect but is limited to new contract or contract-like instruments, new solicitations for a contract or contract-like instrument, extensions or renewals of an existing contract or contract-like instrument, and the exercise of an option on an existing contract or contract-like instrument where the relevant contract or contract-like instrument will be entered into, the relevant contract or contract-like instrument will be extended or renewed, or the relevant option will be exercised on or after October 15, 2021.

It is also important to note that the executive order does not apply to grants, certain contracts or agreements with Indian tribes, contracts or subcontracts under the simplified acquisition threshold, employees who perform work outside the United States, or subcontracts solely for the provisions of products. It does not currently appear that preexisting contracts will be affected by the executive order unless there is an extension, renewal or exercise of an option on an existing contract. Further, the language of the executive order appears to be further limiting to only those workplace locations (as specified by the task force guidance to be issued) in which an individual is actually working on or in connection with a government contract. Although not entirely clear until the guidance is issued, this would suggest that the executive order does not apply to all employees of a government contractor, just to employees at workplace locations in which there are individuals working on or in connection with a covered contract.

For additional information regarding President Biden's Executive Orders on Vaccination Requirements, review the following resources from the White House: [President Biden's COVID-19 Plan](#); [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) | [the White House](#).

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NOW WHAT?

Although employers will have to wait to get clarity on some of these, the anticipated actions are expected to impact more than 90 million workers. Many businesses have already implemented vaccination and testing requirements for employees. Companies who have *not* done so and who may be affected by the above developments should consult legal counsel to discuss the practical implications of these new requirements, such as:

- COVID-19 policies and protocols generally, including how to effectively implement weekly testing requirements, especially for large populations of unvaccinated workers
- The scope and application of COVID-19 vaccination policies
- Best practices for obtaining employee self-identification of vaccination status and documentation corroborating the same, as well as confidentiality and document retention considerations
- Processes for employees to request reasonable accommodations for medical or religious reasons of the mandatory vaccination requirements and documentation supporting the same
- Best practices for handling situations where employees refuse to comply with workplace safety rules
- Employee retention strategies related to those who do not want to comply with these new requirements

We have been advising employers on all of these issues throughout the pandemic. If your business needs help developing new policies and practices on these topics, we can help. For more information, please contact [Brittany Barrientos](#), [Amy Conway](#), [Alisa Ehrlich](#), [Molly Keppler](#), [Pat Konopka](#), [Kelly Maxwell](#), [Erin Naeger](#), [Kristin Parker](#), [Greta Reyes](#), [Stephanie Scheck](#) or the Stinson LLP contact with whom you regularly work.

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