

## President Biden Requires Mandatory Workforce Vaccinations

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President Biden announced a new plan to increase the number of vaccinated Americans during his September 9, 2021 press conference. The President's plan applies to large employers, federal contractors, and health care workers in an attempt to tackle the spread of COVID-19 by vaccinating America's workforce.

### **Employers with 100+ Employees**

In the coming weeks, the Occupational Safety and Health Administration (OSHA) will be establishing a rule requiring all employers with 100 or more employees to vaccinate their employees or require unvaccinated workers to produce a negative COVID-19 test every week before coming to work. No official rule has been established, and a timeline for employers has yet to be put in place.

### **Paid Time Off to Get Vaccinated**

OSHA will also establish a rule requiring employers with 100 or more employees to provide paid time off for workers to get vaccinated or recover from any post-vaccination side effects.

### **Federal Workers and Contractors**

The President's new Executive Order requires all executive branch workers to be vaccinated, including all federal contractor employees who do business with the federal government. Federal contractors include individuals working on or in connection with a Federal Government contract or contract-like instrument. The President's order reaches parties

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that contract with the Federal Government or perform on or in connection with a Federal Government contract or contract-like instrument. The order covers new contracts and contract-like instruments and extensions or renewals of existing contracts or contract-like instruments starting October 15, 2021. Additional guidance is expected to be issued by the Safer Federal Workforce Task Force by September 24, 2021.

### **Health Care Workers at Medicare and Medicaid Participating Hospitals and Other Health Care Settings**

Workers in most health care settings, regardless of size, that receive Medicare or Medicaid reimbursement will be required to be vaccinated under the new mandates. This includes hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. The requirement will also apply to nursing home staff and staff in hospitals and other Centers for Medicare and Medicaid Services regulated settings, including clinical staff, individuals providing services under arrangements, volunteers, and staff who are not involved in direct patient, resident, or client care.

### **Small Business Assistance**

The President intends to strengthen the COVID Economic Injury Disaster Loan program. Small businesses will be able to borrow between \$500,000 to \$2 million, which they can use to hire and retain employees, purchase inventory and equipment, and pay off higher-interest debt. Businesses will not have to start repaying the loans until two years after they receive the funding.

### **Unanswered Questions**

Official mandates and additional guidance on several of these issues have not been published, leaving many unanswered questions, including the following:

- Who will pay for testing?
- Will the American Rescue Act be extended?
- Will tests be provided for free?
- What is the effective date?
- How will employees be counted for the 100 person threshold?
- Will employees who receive an exemption still have to be tested?
- Is the only reasonable accommodation for exempt employees testing them once a week?
- Will remote employees or employees who do not report to an office have to be vaccinated or tested?

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- Is there a procedure that should be followed for testing?
- Will employers have to report to the government?
- What type of COVID-19 test would be required, or can employees be tested using any test?
- Will employers need to collect proof of vaccination?
- How will these mandates be enforced?
- What does it mean to be fully vaccinated?
- How will unions be affected?
- Will there be legal challenges to the mandates?

Koley Jessen will continue to monitor developments related to President Biden's new COVID-19 mandates and will be hosting webinar in the near future. We will continue to advise as updates become available. If you have questions regarding these new mandates or need assistance with any of your policies, please contact a member of Koley Jessen's Employment Group.

*\*Special thanks to Katie Curtiss for her contributions to this article.*