

Workplace Safety:
Biden Administration Takes Action to Require Certain Classes of Employees to be Vaccinated or Tested

The United States is recording a daily average of roughly 150,000 new cases of COVID-19 and about 1,500 fatalities, up from an average of 300 deaths each day just a few months ago. Although there is a free and effective vaccine available, around 80 million Americans eligible to be vaccinated who have not yet gotten their first shot. This has prompted the Biden Administration is increasing efforts to require employees to get vaccinated or be tested in the workplace. Accordingly:

- The Department of Labor will issue a regulation requiring companies with 100 or more employees to ensure their workforces are either “fully vaccinated” or test negative for COVID-19 at least once a week. This regulation would force tens of millions of more workers to get vaccinated—or produce weekly negative test results.
- The Occupational Safety and Health Administration (“OSHA”) is developing the emergency rule, which the White House anticipates will apply to more than 80 million private-sector workers. The rule, which should be published in the coming weeks, would take the form of an emergency temporary standard, meaning it will undergo an expedited review process before taking effect and will not require public comment.
- President Biden is also directing OSHA to require businesses subject to the rule to give workers paid time off to get vaccinated and to recover from any side effects.
- When enforcing the rule, OSHA could fine noncomplying businesses up to \$14,000 per violation. It’s unclear how OSHA would count those violations—whether it will be a violation per workplace, per worker, per day, or some combination of those factors.
- President Biden also signed orders requiring that most federal employees and federal contractors, as well as most health care workers across the country, be vaccinated against COVID-19.
- Federal employees and contractors will have about 75 days to get fully vaccinated from the time the Executive Order is signed. The vaccine requirement will include exemptions for individuals with disabilities and for those who refuse to be vaccinated for religious reasons.
- Health care workers in most settings that receive Medicare or Medicaid reimbursement are also covered under the Executive Order, applying to approximately 50,000 providers, and covering about 17 million health care workers across the country.

In all, the new mandates cover about 100 million workers or two-thirds of all workers in the U.S., officials said. The President's initiatives will, undoubtedly, be subject to legal challenge. Since OSHA already regulates safety in the workplace, however, it is unlikely that legal challenges to OSHA's authority will be successful.

Employers, who will be covered by the new initiatives, and wish to comply should take the following actions:

- Develop a written policy requiring employees to be vaccinated or be tested weekly.
- The policy should contain exceptions for religious objections and /or employees with disabilities and a procedure to consider whether and how such objections can be accommodated.
- Decide how the policy will be enforced: discipline, including termination, unpaid leaves of absence, or other measures.
- Determine how you will verify whether employees are vaccinated.

Contact Us

Fraser Stryker's Labor and Employment Law attorneys are available to answer questions and assist clients with any legal issues related to COVID-19 and employees. Please reach out for further assistance.



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