



Sweeping New Federal COVID-19 Vaccination Mandates on the Horizon for American Employers and Employees

On September 9, 2021, the Biden Administration announced a new [plan](#) to use federal regulatory powers to reduce the number of unvaccinated Americans. The thrust of the administrative initiative involves “substantially increas[ing] the number of Americans covered by vaccination requirements,” primarily through mandates that “will become dominant in the workplace.” The Administration estimates that these new mandates will affect over 80 million Americans eligible to be vaccinated but who have not yet gotten their first COVID-19 shot.

To date, the White House has not provided any information regarding the effective dates for any of its new initiatives. Although specific details, regulations, and deadlines remain to be announced, the White House has provided a high-level overview of what is to come for American employers and employees.

These initiatives include:

- **Requiring all employers with 100 or more employees to ensure that their workforces are fully vaccinated**, and to impose mandatory weekly testing requirements for any employees that remain unvaccinated. The Administration is directing the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard, or ETS, to implement this requirement. Unlike the ETS issued earlier in 2021, which only applied to certain healthcare employers, this new ETS is anticipated to apply to all public and private employers with at least 100 employees nationwide. The White House estimates that it “will impact over 80 million workers in private sector businesses.”

- **Requiring all employers with 100 or more employees to provide paid time off to get vaccinated.** In connection with the above-mentioned ETS, OSHA will adopt a rule requiring that employers with more than 100 employees provide paid time off for employees to get vaccinated and to recover from any vaccination side effects.
- **Requiring all federal workers to be vaccinated.** A new executive order will eliminate the exception established in July, which allowed federal workers to remain unvaccinated so long as they satisfied weekly testing and other safety requirements. Going forward, vaccination will be mandatory for covered federal employees.
- **Requiring employees of all federal contractors to be vaccinated.** President Biden signed an executive order that extends the vaccination mandate to workers employed by the millions of contractors that do business with the federal government.
- **Imposing mandatory vaccination requirements for workers employed by healthcare facilities.** The Centers for Medicare & Medicaid Services will adopt regulations requiring COVID-19 vaccination for workers “in most health care settings that receive Medicare or Medicaid reimbursement, including but not limited to hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies.” It is estimated that these requirements will apply to approximately 50,000 providers and cover most health care workers nationwide.
- **Calling on states to impose mandatory vaccination requirements for all school employees.** President Biden is calling on state governors to require vaccination for all public and private teachers and school staff.
- **Calling on entertainment venues to require proof of vaccination or testing for entry.** The Administration’s plan calls upon sports arenas, concert halls, and other large venues to require patrons to be vaccinated or show proof of a negative test for entry. However, the White House has not indicated that any regulations will be adopted compelling such big venues to impose vaccination and testing requirements for entry.

Because the White House just announced these new initiatives, we anticipate more information and detail will be provided in the weeks to come. Litigation challenging any new vaccination mandates for employers and employees is also likely.

Key Takeaways

- The Biden Administration is doubling down on its efforts to compel vaccination among hesitant Americans.
- The White House plans to use regulatory powers afforded to federal agencies, including the Department of Labor and OSHA, to impose and enforce these new requirements on both employers and employees.

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