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President Biden's Nationwide Strategy to Increase COVID-19 Vaccination Includes an Expected Mandatory Vaccination Standard from OSHA

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On September 9, 2021, President Biden announced implementation of a national strategy for combating COVID-19 essentially aimed towards increasing COVID-19 vaccination of the workforce across the country (the "Announcement"). While the details of the various measures are yet to be disclosed, below is a summary of currently available information, and what employers could do to prepare for the expected mandatory vaccination standard from OSHA.

Mandatory Vaccination in Private Workplaces: OSHA is expected to issue an Emergency Temporary Standard requiring all private employers with 100 or more employees to mandate COVID-19 vaccination or require weekly COVID-19 testing for all employees. The standard is expected to require employers to give workers paid time off for the time it takes for workers to get vaccinated or to recover if they are sick post-vaccination. Further details of the expected standard, the timing of when the standard would be issued and become effective are unknown at this time. It also is expected that there will be legal and political challenges to the standard, which may delay its implementation. Regardless, in anticipation of the standard and subject to other applicable mandates and guidance, employers with 100 or more employees may benefit from preparing their workplaces as follows:

- Explore whether a blanket vaccination mandate in the workplace may be a feasible and preferable option, which may obviate the need for weekly testing.
- Consider whether a self-administered rapid test for COVID-19 would be a feasible and more efficient option as opposed to requiring unvaccinated employees to visit a third-party site on a weekly basis. In that regard, employers should note that according to the Announcement, retailers such as Walmart and Amazon are expected to begin selling at-home rapid tests at cost. Additionally, the President announced a commitment towards increasing accessibility of free COVID-19 testing.
- Explore whether working with a pre-determined third-party service provider (that provides both COVID-19 vaccination and testing services) would promote efficiency with respect to the work time that employees may need to spend away from the workplace.
- Consider procedures for handling instances where employees decline COVID-19 vaccination due to medical or religious reasons, and weekly COVID-19 testing is required.
- Explore revisions to current workplace vaccination and testing policies, including procedures for tracking the vaccination and testing status of employees. This effort may include designating one or more supervisory (or human resources) employees who should be trained for the task including maintaining confidentiality of the information gathered.
- Consider worksite-specific issues that may present unique challenges to compliance with the expected standard.
- Consider forming a dedicated workplace committee (preferably composed of managers and employees) to ensure implementation and monitoring of the expected standard.

Mandatory Vaccination in Federal Workplaces: President Biden has signed an Executive Order requiring each federal agency to implement a program requiring COVID-19 vaccination for all of its federal employees. Guidance on agency implementation of this requirement for all agencies covered by the Executive Order shall be issued within seven days of the Executive Order. The President also signed an Executive Order directing that this standard be extended to employees of contractors that do business with the federal government.

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Vaccination of healthcare workers: According to the Announcement, President Biden will be signing an Executive Order which will require the majority of healthcare workers to be vaccinated. The Centers for Medicare & Medicaid Services (CMS) is taking action to require COVID-19 vaccinations 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. This action builds on the vaccination requirement for nursing facilities recently announced by CMS and will apply to nursing home staff as well as staff in hospitals and other CMS-regulated settings, including clinical staff, individuals providing services under arrangements, volunteers, and staff who are not involved in direct patient, resident, or client care.

Large entertainment venues to require proof of vaccination or testing for entry: The President's plan calls on entertainment venues like sports arenas, large concert halls, and other venues where large groups of people gather to require that their patrons be vaccinated or show a negative test for entry.

While we stay tuned for additional information and the release of more definitive directives, employers should continue to monitor for further guidance and prepare workplaces accordingly.

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- [Checklist for Employers Mulling Relaxing COVID-19 Safety Rules for Fully Vaccinated Employees](#) – 05/20/2021
- [Update on OSHA's COVID-19 National Emphasis Program and Enforcement](#) – 03/30/2021
- [OSHA Announces New National Emphasis Enforcement Program on COVID-19](#) – 03/15/2021
- [OSHA Issues Revised COVID-19 Guidance for Workplaces](#) – 02/02/2021
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