

PRESIDENT BIDEN ANNOUNCES NEW VACCINE MANDATE FOR HEALTH CARE WORKERS AND LARGE EMPLOYERS

September 13, 2021

On Thursday, September 9, 2021, President Joe Biden announced a [multi-pronged COVID-19 plan](#), which includes several broad new federal vaccine mandates that will cover, among other groups, health care workers and employees of large employers.

President Biden's plan includes the development of emergency regulations by the Centers for Medicare & Medicaid Services ("CMS") that will require vaccinations for many health care workers. This requirement follows closely on the heels of CMS's recently announced COVID-19 vaccine mandate for nursing facilities. The new rule will apply to "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." Furthermore, it will apply not only to clinical staff, but also to "individuals providing services under arrangements, volunteers, and staff who are not involved in direct patient, resident, or client care." The Administration predicts that this CMS requirement will cover approximately 50,000 health care providers and 17 million health care workers across the nation. CMS's Interim Final Rule is expected to issue in October.

President Biden also has directed the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") to develop a rule that will mandate all employers with one hundred (100) or more employees require their employees be fully vaccinated or produce a negative COVID-19 test at least once a week "before coming to work." The OSHA regulation also will require employers with more than one hundred (100) employees to provide paid time off for employees to obtain their vaccine or to recover from any post-vaccination side effects.

Further, President Biden signed two executive orders on September 9, 2021, found [here](#) (Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees) and [here](#) (Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors) that require vaccination for executive branch employees as well as federal contractors' employees who are performing the contracted work. The Executive Orders eliminate the exception created in the July 2021 vaccination mandate for federal employees and contractors that had allowed them to "opt out" if the employees utilized alternative safety measures such as wearing masks, social distancing, and weekly testing for COVID-19.

The announcement raises many questions, including whether incentives for vaccination should continue to be considered, whether the 100-employee threshold will include part-time employees, and whether the employer or

employee will bear the significant cost of weekly COVID-19 testing. Additional details are expected soon as the formal rulemaking process progresses in the coming days.

In the meantime, health care employers should make initial preparations for the upcoming mandate. Employers can begin to decide how they will collect and store employee vaccination records, the method for employees to report weekly COVID-19 test results, tracking and allocation of paid time off used by employees to get vaccinated and recover from vaccination side effects, and effective communication strategies to address employee questions, concerns, and any continued opposition to compliance either with the vaccine mandates or alternative requirements.

If you have questions or need assistance regarding compliance with these vaccine requirements and other employment laws, please contact a member of Hancock Daniel's [Labor & Employment](#) team. For any other concerns arising from the pandemic, please contact a member of our [COVID-19 Task Force](#).

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