

Biden Administration Announces Sweeping New COVID-19 Vaccination Requirements for Private Employers and Health Care Facilities

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On September 9, 2021, President Biden unveiled his administration's plan to combat the recent COVID-19 surge across the United States, referred to by the administration as the "Path out of the Pandemic." The plan, in addition to requiring all federal workers to be vaccinated against COVID-19 as a condition of continued employment, requires that all large private employers and federally funded health care facilities implement mandatory vaccination programs in the workplace. Further, the plan requires federal contractors to implement mandatory vaccination requirements across their workforces. The new requirements are estimated to impact roughly 100 million Americans.

With respect to private employers, President Biden revealed that the Department of Labor's Occupational Safety and Health Administration (OSHA) will be issuing an emergency regulation requiring companies with 100 or more employees to require their staff to be fully vaccinated against COVID-19. Those employees who refuse to be vaccinated will be required to produce negative COVID-19 test results on a weekly basis before entering the workplace. Employers covered by the regulation could face fines up to \$14,000 per violation for refusing to comply. The regulation is also expected to require large employers to provide employees with paid time off to receive the vaccination and recover from any negative side effects of vaccination. President Biden noted that OSHA would be issuing the emergency regulation in the "coming weeks," and that there would be some grace period between OSHA's issuance of the regulation and enforcement.

President Biden also announced that the Centers for Medicare & Medicaid Services in the Department of Health and Human Services will issue an interim final rule with a comment period in early October requiring all healthcare facilities to implement mandatory vaccination programs as a condition of participation in the Medicare and Medicaid programs. The announcement comes just weeks after the Biden Administration previewed a mandatory vaccine policy that would apply only to nursing homes. The rule is now expected to apply to all certified Medicare and Medicaid facilities, including hospitals, long-term care facilities, dialysis facilities, ambulatory surgical settings, and home health agencies. At this time, it is unclear what exemptions may be available to unvaccinated workers, nor is it clear if there will be a testing alternative. Government officials expect that this new policy will affect tens of thousands of healthcare providers and millions of healthcare workers.

Lastly, President Biden signed an executive order requiring all contracts the federal government enters into on or after October 15, 2021 to include a provision requiring the contracting counterparty to implement a mandatory vaccination policy for its workers. This requirement will not be applicable to government contracts entered into before October 15, 2021, or government contracts that materialize from solicitations made before October 15, 2021. The executive order notes that by September 24, 2021, the Safer Federal Workforce Task Force will provide additional guidance to facilitate government contractors in complying with this requirement.

President Biden's announcement has sweeping ramifications for covered employers and certified Medicare and Medicaid facilities. We will continue to monitor these developments closely, and will provide a further update once the Biden Administration releases additional guidance or OSHA and CMS issue their anticipated emergency regulations.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.

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