



Legal Alert, COVID-19 News & Legal Alerts

## FEDERAL VACCINE MANDATE ANNOUNCED FOR LARGE EMPLOYERS

September 10, 2021

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On Thursday September 9, 2021, the Biden administration announced a COVID vaccine initiative that will require vaccinations or weekly testing for all federal contractors and for employers with at least 100 employees. The measure has two separate legal mechanisms: (1) an Executive Order requiring vaccination for federal contractors; and (2) an upcoming regulation from the U.S. Department of Labor's Occupational Safety and Health Administration

("OSHA") which will require employers with at least 100 employees to ensure their workforce is either vaccinated or tested on a weekly basis.

### Federal Contractors

The Executive Order issued on September 9th provides that federal contractors will be required to include a clause in all new contracts that affirms compliance with new COVID safety guidance. The guidance itself is not included in the Order; instead, the Order directs the Safer Federal Workforce Task Force to issue guidance in the coming weeks that guarantees workers of federal contractors are "adequately protected from COVID-19."

While not explicitly stated in the Order, it is widely anticipated that the Guidance will require federal contractors to ensure their workers are vaccinated against COVID-19, or alternatively, to submit to weekly testing. The Order directs the Task Force to issue "explanations of protocols required of contractors" and any relevant exceptions by September 24, 2021. The Guidance is expected to be formally approved by the Office of Management and Budget in the coming weeks, with a formal determination to be published in the Federal Register.

Notably, the Order seemingly applies only to new contracts and solicitations after the effective date of the Guidance.

### OSHA Rule Mandating Vaccinations for Employers With At Least 100 Employees

The administration also directed OSHA to draft an emergency regulation requiring employers with 100 or more employees to be vaccinated, or, submit to regular testing. Employees who decline vaccination would have to provide proof of a negative test result every week. Administration officials stated employers could be fined up to \$14,000 for violations.

The regulation is expected to be published and take effect in the coming weeks, but at the time of this writing, the mandate is not in place.

A legal challenge to the regulation in one or more jurisdictions appears likely.

The announcement leaves employers with several questions about the upcoming regulation's scope and detail. Among them are questions over testing costs, deadlines for employees to get vaccinated, reasonable accommodation concerns, and joint-employer issues to determine employer size. New York employers may also have to contend with the regulation's expected details on paid time off to receive a vaccine and its interplay with New York's existing law on the same issue.

### **Next Steps and Considerations**

Entities that routinely contract with the federal government should monitor for publication of the Task Force Guidance as it pertains to their future contract bids and expectations among the workforce.

Larger employers subject to the upcoming OSHA regulation would be well-instructed to review and assess their workforce's vaccination status. Human Resource teams and management may also consider proactively addressing employee concerns before the regulation is in place.

*This alert does not purport to be a substitute for advice of counsel on specific matters.*

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