# Client Alert: Biden Administration Announces New Vaccine Mandate for Employers

BY TRACY THOMAS BOLAND • SEPTEMBER 10, 2021

On September 9, 2021, President Joe Biden announced sweeping COVID-19 vaccination and testing requirements applicable to both public and private employers nationwide. The following is an overview of the important upcoming changes in the law.

## NEW DOL RULE WILL REQUIRE ALL LARGE EMPLOYERS TO ENSURE THAT EMPLOYEES ARE VACCINATED OR TESTED

The President has directed the U.S. Department of Labor ("DOL") to issue an emergency rule requiring all employers with 100 or more employees to ensure that their workforce is "fully vaccinated" against COVID-19 or, alternatively, to require any unvaccinated workers to produce a negative COVID-19 test at least once per week. Employers with 100 or more employees will also be required to offer paid leave for workers to get vaccinated and recover from any vaccine-related side effects. Employers may face fines of up to $14,000 per violation for failure to comply with these new requirements once they have taken effect.

Many important details regarding these forthcoming requirements are currently unclear, including how exactly employers will be expected to ensure that their workforce is "fully vaccinated," and how this new paid leave will be administered. It is expected that the federal government will provide additional information concerning this new proposed rule—including when the rule will take effect—in the coming weeks.

## NEW CMS RULE WILL REQUIRE VACCINATIONS IN ALL MEDICARE AND MEDICAID-CERTIFIED FACILITIES

In addition, the Biden Administration will require COVID-19 vaccination of staff within all Medicare and Medicaid-certified facilities nationwide. Specifically, the Centers for Medicare & Medicaid Services ("CMS") announced that existing emergency regulations requiring vaccinations for nursing home workers will be expanded to include all health care facilities certified to participate in the Medicare and Medicaid programs, including but not limited to hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies.

CMS has stated that an interim final rule (with a comment period) implementing these new vaccine requirements will be issued in October.

## NEW EXECUTIVE ORDERS REQUIRE VACCINATIONS FOR FEDERAL EMPLOYEES AND

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## CONTRACTORS

The President also has issued Executive Orders pertaining to employees of the federal government and federal contractors.

The Order applicable to federal employees requires COVID-19 vaccinations for those employees. The Order directs the Safer Federal Workforce Task Force ("Task Force") to issue further guidance by September 16, 2021 concerning implementation of this mandate. The White House has announced that unvaccinated federal employees will have "about 75 days" to get vaccinated.

The Order applicable to federal contractors directs them to include a clause in federal contracts requiring compliance with pandemic protocols issued by the Task Force. The Order gives the Task Force until September 24, 2021 to issue further written guidance for federal contractors.

For workers subject to either Executive Order, there will be exceptions to the vaccine mandate for legally recognized reasons, such as disability or religious objections.

## CLIENT TIP

Please stay tuned for further updates within the coming weeks regarding these new federal vaccine mandates.

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