

President Biden’s “Path out of the Pandemic” Imposes

COVID-19 Response Resource Center: Timely Counsel for your Business

By Claire O'Brien and Natalie Sanders on 09.10.2021

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On Sept. 9, 2021, President Biden announced a six-part plan to combat COVID-19. In spoken remarks, he described a “pandemic of the unvaccinated,” caused by the fact that nearly 80 million Americans have yet to get a shot. To address the ongoing crisis, the White House is taking steps to substantially increase the number of vaccinated Americans by ensuring vaccine requirements “become dominant in the workplace.”

Among other things, the plan includes vaccination requirements for federal workers, federal contractors and health care workers at Medicare and Medicaid participating hospitals and other health care settings. Large employers will be required to ensure their workforce is fully vaccinated or impose certain testing requirements and will be required to provide employees with paid time off for vaccination and vaccine side effects.

The White House will announce additional steps in the coming weeks. Readers should continue to monitor developments as the requirements described below may evolve.

Employers with 100+ Employees

President Biden called on the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard requiring large employers (those with 100+ employees) to mandate that their employees be fully vaccinated or submit to weekly testing. The president is also directing OSHA to require that large employers give those workers paid time off for vaccination or related side effects. The president described this as “removing one of the last remaining obstacles” to vaccination. Employers anticipating these new requirements should begin thinking about how they will carry out the process.

However, until the standard is issued and more guidance is available, several questions are unlikely to have clear answers. For example, will employers be required to compensate employees for time spent getting tested every week, even if they are declining vaccination for reasons unrelated to any underlying health condition or religious belief that prevents them from being vaccinated? How will employers manage the process of receiving weekly test results in a manner that protects this confidential medical information?

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Executive Branch Federal Workers and Federal Contractors

By executive order, the president expanded vaccination mandates to all executive branch employees and removed the option of weekly testing except for approved exemptions. The National Treasury Employees Union, one of the major unions for federal employees, has already indicated that it will accept the vaccine mandate.

The president also ordered the Safer Federal Workforce Task Force to issue guidance by Sept. 24 regarding measures that must be taken in the workplace to protect workers of federal contractors. This expands his prior executive order that focused on federal contractors working at federal facilities. The president summarized his position on this issue: "If you want to work with the federal government and do business with us, get vaccinated."

Health Care Workers at Medicare and Medicaid Participating Hospitals and Other Health Care Settings

The federal government currently requires vaccination of nursing home workers who treat Medicare and Medicaid patients. Driven by what the president described as a "simple, straightforward" belief that those seeking health care should be confident that the people treating them are vaccinated, the new plan expands the existing rule to cover workers in hospitals, home health care facilities, dialysis facilities, ambulatory surgical settings, and other medical settings that receive Medicare or Medicaid reimbursement. These requirements apply to approximately 50,000 providers and will create a more consistent standard in health care settings across the country.

Other Elements of the COVID-19 Plan

The COVID-19 plan includes several other elements that may be of interest to employers, including a call for large entertainment venues such as sports arenas and concert halls to require their patrons be vaccinated or show a negative test for entry.

The plan also imposes measures related to schools, including a requirement that teachers and staff in Head Start and Early Head Start programs be vaccinated. The president called on governors to require vaccination for all teachers and staff, noting that even one unvaccinated teacher can lead to dozens of sick school children. Currently only nine states (as well as the District of Columbia and Puerto Rico) have vaccination requirements for K-12 school staff.

The plan also seeks to improve care for individuals who contract COVID-19 by increasing support for over-burdened hospitals. The Department of Defense will double the number of teams of clinicians it has deployed to support hospitals battling a surge in COVID-19 cases.

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Finally, the president appealed to the nation's family physicians, pediatricians and general practitioners, urging them to reach out to their unvaccinated patients and encourage them to get the shot.

This Alert provides an update on a legal development. It is not intended as legal advice. It does not address every element of President Biden's COVID-19 Plan. For further information, review the White House resources available [here](#). For assistance evaluating how the new requirements may impact your workplace, please reach out to a member of the Brooks Pierce Labor & Employment or Health Care teams.

Tags: Vaccine