



# **Understanding Biden's Vaccine Mandate**

Presented by TIG Advisors

# Introduction

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## Agenda:

- Rule Overview
- What's Known and Unknown
- Expected Enforcement Timetable
- What Employers Can Do
- Employer Takeaway

The purpose of this presentation is to provide an overview of what employers need to know about President Biden's vaccine and testing mandate. This presentation is informational and nonexhaustive. For legal advice, employers should contact local legal counsel.

*This is a developing issue. Information will be updated here as more details are released.*

# Rule Overview

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Recently, the White House ordered all federal workers and contractors to get vaccinated against COVID-19.

- The Occupational Safety and Health Administration (OSHA) has now been directed to issue an emergency temporary standard (ETS) imposing similar requirements for private employers.
- States with their own workplace safety agencies will have to adopt equivalent measures (though states are permitted to implement more stringent rules).



# Rule Overview

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Soon, employers with 100 or more employees will need to:

- Require employees to get vaccinated against COVID-19; OR
- Require unvaccinated employees to produce evidence of a negative COVID-19 test each week

The move is estimated to affect over 80 million private-sector workers.

- Additionally, COVID-19 vaccinations will be required for more than 17 million health care workers.



# Rule Overview

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The rule will also reportedly require large employers to provide their workers with paid time off to get vaccinated and recover from any vaccination-related side effects (e.g., chills).

Companies that fail to comply may be subject to up to \$14,000 in fines per employee.

OSHA will announce more specifics in the coming weeks.



# What's Known and Unknown

Here's what's known about the upcoming rule:

- The rule will apply to employers with 100 or more employees.
- Employers will be able to decide if they want to adopt a strict, mandatory vaccination policy or allow testing as an alternative.
- Employers must provide paid leave for employees to receive and recover from vaccinations.
- Remote employees not working in contact with others may be exempt from the ETS (unless they come into the workplace).



# What's Known and Unknown

Here are some topics that are unknown about the upcoming rule:

- When will the ETS begin to be enforced?
- Who must pay for weekly testing?
- Will there be new guidance on how employers should handle accommodations for employees seeking an exemption?
- Must paid leave be provided for employees' COVID-19 testing as it is for vaccinations?

Employers will need to stay tuned for more updates from OSHA.



# Expected Enforcement Timetable

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First, OSHA will publish its ETS, which will include important details and enforcement guidelines.

- The ETS is expected to come in the weeks ahead; however, an actual release date is uncertain.
- In states where federal OSHA does not have jurisdiction over workplace safety, state agencies will be required to either adopt the ETS or develop their own within 30 days that is “at least as effective.”





# Expected Enforcement Timetable

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An ETS can only remain in effect for six months.

- It must be replaced by a permanent standard after that time.
- This process follows the usual procedure for adopting a permanent standard except that a final ruling should be made within six months from the date OSHA publishes the ETS in the Federal Register.



# What Employers Can Do

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Here are some actions employers can consider when preparing for the upcoming requirement:

- Determine whether COVID-19 vaccination will be required as a condition of employment or if weekly negative testing will be an alternative.
- Create a plan for confidentially tracking employee vaccination statuses in compliance with all applicable laws.
- Prepare to test employees for COVID-19 on a weekly basis, if applicable, and track results confidentially.



# What Employers Can Do

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- Consider how to address noncompliance by employees.
- Assess how to handle accommodation requests for those seeking vaccination exemptions.
- Prepare for potential staffing shortages or scheduling changes to afford employees time to get vaccinated.
- Plan ahead for how to effectively communicate workplace policy changes to employees.

This list is nonexhaustive, as certain considerations will be unique to individual employers.



# Employer Takeaway

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The ETS may face legal challenges. However, large employers should begin preparing to comply as soon as possible. Taking proactive steps now can help prepare for when the rule is put in place.

Employers with less than 100 employees that are interested in their own vaccine mandates should consult with legal counsel before moving forward.

**Contact us today for more resources.**





# Thank You

Contact us today for more information or questions:

**TIG Advisors**

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