

CLIENT ALERT: President Biden Announces General Plan for Mandatory Vaccination Requirements for Most Large Employers, Health Care Employers, Federal Contractors and Federal Employees

On September 9, 2021, President Joseph Biden announced that his administration is implementing a new, comprehensive [national strategy](#) to combat COVID-19 and its variants, including the increasingly-prevalent Delta variant. This sweeping new plan will use a combination of executive orders and new federal rules to establish mandatory COVID-19 vaccination requirements for most employers with 100 or more employees, health care employers, federal contractors and federal employees. While the details are forthcoming, the below summarizes what President Biden is proposing based on information currently available.

Large Employers with 100 or More Employees

According to the Biden administration, the Department of Labor's Occupational Safety and Health Administration ("OSHA") is developing a rule that will require all employers with 100 or more employees to ensure that their employees are fully vaccinated or otherwise require any unvaccinated employees to produce a negative COVID-19 test result on at least a weekly basis before coming to work. It is expected that OSHA will issue an Emergency Temporary Standard ("ETS") to implement this requirement. While there is no deadline for the ETS to be issued, OSHA has indicated that it should be implemented in the coming weeks. As part of the plan, the Biden administration committed to expanded, low cost or free COVID-19 testing.

In addition, OSHA is developing a rule through the ETS that will require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated or to recover from any side effects

post-vaccination.

Ultimately, it is expected that these requirements may impact over 80 million workers in private sector businesses with 100+ employees.

Health Care Employers Receiving Medicare or Medicaid Reimbursement

The Biden administration also announced that the Centers for Medicare & Medicaid Services (“CMS”) will take action to require COVID-19 vaccinations for employees in most health care settings that receive Medicare or Medicaid reimbursement (e.g., hospitals, dialysis facilities, ambulatory surgical settings, home health agencies, etc.). These steps will build upon the vaccination requirements that CMS had previously been announced for only nursing facilities. Similar to the ETS for large employers, we are awaiting the issuance of further details regarding the actual terms of CMS’ anticipated action here. In the end, it is expected that these requirements will apply to approximately 50,000 providers and cover a majority of health care workers across the country.

Federal Contractors and Federal Executive Branch Employees

Through a series of Executive Orders issued on September 9, 2021, President Biden is requiring that many [federal contractor employees](#) and all [federal executive branch employees](#) be vaccinated. The Safer Federal Workforce Task Force (“Task Force”) will be issuing further guidance on the implementation of these requirements (by September 24, 2021 for federal contractors and by September 16, 2021 for federal employees).

The Executive Orders did not establish specific deadlines for when employees must become fully vaccinated; however, the Biden administration has indicated that employees will have a 75-day “ramp-up” period in which to do so.

As of now, we know that the Executive Orders do not currently contemplate a similar weekly-testing alternative to vaccination requirements like that for large employers. The Biden administration has indicated, however, that there still may be accommodation requirements for employees with disabilities and sincerely-held religious beliefs.

Large Entertainment Venues

President Biden’s plan also calls on entertainment venues like sporting

arenas, large concert halls, and other venues where large groups of people gather to require that their patrons be vaccinated or otherwise show a negative test for entry. As with the other matters discussed above, further guidance is expected.

Next Steps

As discussed above, we await further guidance and a significant amount of detail from the Biden administration and the relevant agencies to help clarify the full scope and terms of these newly-announced requirements. There are also likely to be a number of legal challenges raised, bringing some question as to the ultimate impact and enforceability of the plan's mandates. In the meantime, however, employers should begin considering the possibility that they may need to adjust their approaches to their COVID-19 vaccination policies in order to comply with these new, upcoming federal mandates.

MBJ will continue to monitor these issues for any forthcoming guidance. In the meantime, please contact your MBJ attorney with any questions you may have regarding these or any of the other legal changes addressed above.

[Sean P. O'Connor](#), who is a partner with Morgan, Brown & Joy, LLP, authored this client alert. Sean may be reached at (617) 523-6666 or at soconnor@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on September 10, 2021.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.

byline-default