

President Biden Releases COVID-19 Action Plan Including Broad Vaccine Mandates For Employees

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By Lindsey A. Gil on September 10, 2021

On September 9, 2021, President Biden issued his Path Out of the Pandemic COVID-19 Action Plan (hereinafter, the “COVID-19 Action Plan”). The six-pronged COVID-19 Action Plan contains multiple components aimed at increasing workforce vaccinations through employer vaccine mandates and required paid time off for COVID-19 vaccinations.

Pursuant to the Biden Administration’s COVID-19 Action Plan, the following employers must now generally require COVID-19 vaccination for all employees (subject to applicable disability or religious exemptions):

- Private Employers of 100 or More Employees

Under President Biden’s COVID-19 Action Plan, the Department of Labor’s Occupational Safety and Health Administration (OSHA) has been charged with developing an Emergency Temporary Standard (ETS) pursuant to which all private employers with 100 or more employees must require their employees to either: **(1) obtain the COVID-19 vaccine; or (2) produce a negative COVID-19 test result on at least a weekly basis before coming to the workplace.**

As part of the ETS, OSHA has also been charged with developing a rule requiring private employers with 100 or more employees to provide paid time off to workers to obtain the COVID-19 vaccine and to recover from side effects associated with the vaccine.

It is presently unclear when the ETS will be issued. Further, there are many open questions about how it will be implemented, including whether employers will need to pay for the required COVID-19 testing for employees who elect to remain unvaccinated or compensate employees for time spent getting tested.

Nevertheless, employers should begin developing vaccination policies, vaccination exemption policies, and plans for communicating with their employees about vaccination and testing requirements now as there may not be significant lead time between the issuance of the ETS and its effective date.

- Executive Branch and Federal Contractors

In support of his COVID-19 Action Plan, President Biden has signed two executive orders mandating COVID-19 vaccination for all executive branch employees and for employees of federal contractors. These orders represent a broad expansion of the Biden Administration’s earlier mandate requiring that all Department of Defense, Department of Veterans Affairs, Indian Health Service and National Institute of Health employees undergo vaccination. This expansion is significant because it eliminates executive branch and federal contractor employees’ ability to avoid vaccination through weekly testing, which was previously allowed under a July 29, 2021 directive from the White House.

While the COVID-19 Action Plan does not contain a specific time-requirement for vaccination, White House press secretary Jen Psaki has said that federal workers will have around 75 days to become fully vaccinated. It is unclear whether that timetable will also apply to employees of federal contractors. Further guidance as to contractors will likely be included in a forthcoming report by the Safer Federal Workforce Task Force, which is expected on or before September 24, 2021.

- Healthcare Employers

Under the COVID-19 Action Plan, the Centers for Medicare and Medicaid Services (CMS) will also begin mandating vaccination for employees in most healthcare settings, including hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies, as a requirement of continued federal funding. The COVID-19 Action Plan does not include a defined timetable for these vaccinations.

Further Information

There are still many questions about how President Biden's COVID-19 Action Plan will be implemented. We expect further updates from the Biden Administration in the coming weeks and will continue to report on key developments. In the meantime, impacted employers should undertake steps to comply with the COVID-19 Action Plan, such as developing vaccination policies (including how proof of vaccination will be provided and the process for requesting and reviewing medical and religious exemptions) and providing notice to employees of applicable vaccine mandates. In doing so, employers are encouraged to consult with a member of Peabody & Arnold's Employment Law and Litigation Practice Group.