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# Biden Administration's COVID-19 Vaccine Initiative: Preparation. Not Panic.

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Following President Biden's Sept. 9 announcement of a national strategy to combat COVID-19, the White House published this week two executive orders. The first requires all federal employees to be vaccinated; the second requires federal contractors to vaccinate their employees.

Separately, Biden's directive to OSHA to develop an Emergency Temporary Standard (ETS) for employers with more than 100 employees has employers scrambling-- asking questions, raising concerns, and in some cases, triggering anxiety.

Fear not. The details of these requirements have yet to be written, so there is time to prepare.

To assist in that preparation, here is a summary of what we know so far and what we can reasonably expect.

## Employers with 100 or More Employees

The Department of Labor – and, in particular, OSHA – has begun the process of developing an Emergency Rule that will apply to employers with 100 or more employees. This Emergency Temporary Standard (ETS) will require employers to ensure employees are fully vaccinated or produce a negative COVID-19 test at least once a week. We expect the “100 or more employees”

requirement will apply company-wide; not on a “per location” basis.

While many large employers have already begun developing policies and mandating vaccinations for public health and economic reasons, the precise details of OSHA’s expected rule remain unknown. Nevertheless, based on administration statements and similar rules regarding COVID-19, we will make some educated guesses.

### **Effective Date**

Developing the rule will not happen overnight, but, as far as regulations go, we expect it will happen quickly. How long? The previous COVID-19 rule for healthcare workers established earlier this summer – from President Biden’s initial Executive Order to OSHA to evaluate and create an emergency temporary standard until OSHA’s publication in the Federal Register – took approximately five months. The administration has indicated they want this rule in place much quicker, and given the more focused scope of the rule, we expect that to be accurate. A DOL representative announced Sept. 10 that OSHA would complete the new ETS “expeditiously” – that is, in weeks, not months.

Once the ETS is published in the Federal Register, OSHA generally provides for a grace period for compliance, which could be around 30 days, as it was for the healthcare ETS.

We expect a similar timeline regarding the newly announced ETS, such that it’s reasonable to predict the ETS is finalized and in place by the beginning of November.

### **Vaccinations or Testing?**

The Biden administration has said employers may choose to require all employees be vaccinated, or allow an unvaccinated employee to “opt out” of this requirement by submitting to weekly testing. Who pays for weekly testing (whether an unvaccinated or otherwise exempt employee) remains an open question.

Practically, COVID-19 vaccinations remain free and widely available, a fact the administration has emphasized in responding to the perceived burdens of the new rule. As an additional response to similar concerns, President Biden has invoked the Defense Production Act to increase production of rapid tests and teamed with major retailers, and is expanding free testing at pharmacies.

### **Exemptions**

We are confident the ETS will recognize exemptions for verified medical and religious reasons. Those who are exempt will likely be subject to a weekly testing requirement.

### **Penalties for Failing to Comply**

Once the ETS is in effect, the administration has indicated that OSHA will seek the maximum penalty of nearly \$14,000 for each violation – making it a costly proposition to ignore the directives.

## **Federal Contractors**

In terms of effective dates, there is clear legal guidance for the required vaccination of employees of federal contractors. The Biden executive order on such vaccinations takes effect Oct. 15, 2021, which allows contractors just over a month to prepare. Still, there are some open issues that will require clarification regarding the scope of covered federal contractors. Additional guidance as to the details of these requirements will be distributed by the Safer Federal Workforce Task Force by Sept. 24. Again, limited exceptions will exist, most notably for religious and medical reasons.

For contractors with existing contracts or that enter into contracts with the federal government between now and Oct. 15, the new requirement will not apply, although the administration is strongly encouraging all agencies to demand compliance to the extent possible.

## **Next Steps**

More information will follow soon as our team of labor and employment attorneys continues to monitor new developments.