

Insights

President Biden's Vaccination Mandates under COVID-19 Action Plan

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By: Amy J. Adolay

Yesterday, Thursday, September 9, 2021, President Biden announced that he has signed new Executive Orders relating to mandatory COVID-19 vaccinations. Per the President's "Path out of the Pandemic: President Biden's COVID-19 Action Plan" ("the "Plan"), which can be found here, **President Biden's COVID-19 Plan | The White House**, the mandatory COVID-19 vaccination components of these new Executive Orders include the following:

- The Occupational Safety and Health Administration ("OSHA") will be issuing a new Emergency Temporary Standard ("ETS") requiring that employers with 100 or more employees either mandate that their employees be fully vaccinated or undergo weekly COVID-19 testing and produce a negative result before reporting to work. The ETS will also require that these employers (with 100 or more employees) pay employees for the time spent becoming vaccinated as well as for any time off the employees need to recover from the vaccine.
- COVID-19 vaccinations will be required of all federal employees and all contractors who do business with the federal government.
- The Centers for Medicare and Medicaid Services (CMS) will require vaccinations for workers in most healthcare settings, which include but are not limited to hospitals, home health agencies, ambulatory surgical settings, and dialysis centers, if such facilities receive Medicare or Medicaid reimbursement. The requirement will apply even to employees not involved in direct patient care and to independent contractors and volunteers.
- The President requests that large entertainment venues such as sports arenas, concert halls, and other similar places where large groups of people gather either require attendees to be fully vaccinated or produce a negative COVID-19 test result prior to entry.

The Plan also provides mandates and guidance relating to other COVID-19 initiatives, including access to booster shots, guidance for keeping schools open, increased testing and masking efforts, economic recovery, and improving care for individuals with COVID-19.

Reactions and questions relating to the Plan began immediately following its announcement. Is this legal? What if we don't comply? Will the employer be required to pay for the weekly testing? Are enough tests available for those who will need them? Will mandatory vaccination cause businesses experiencing workforce shortages to lose even more workers? Are employers still required to provide religious and disability-based exemptions?

The answers to these questions and others should be carefully considered with the aid of legal counsel. Affected employers will need to craft mandatory vaccination policies that take into account both the Plan as well as additional applicable federal, state, and local laws. Further, many questions will remain unanswered until the



actual texts of all of the Executive Orders are published and the rules called for in the Plan are issued by the identified federal agencies.

Businesses and other entities with questions regarding the mandates and guidance set forth in the Plan and new Executive Orders may reach out to any member of Krieg DeVault's **Labor and Employment Law Practice** for assistance.

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