

FACT SHEET: Biden Administration Announces Details of Two Major Vaccination Policies

On November 4, 2021, the Biden Administration is announcing the details of two policies on COVID-19.

First, the Department of Labor’s Occupational Safety and Health Administration (OSHA) is announcing the details of a requirement for employers with **100 or more employees** to ensure each of their workers is fully vaccinated or tests for COVID-19 on at least a weekly basis. The OSHA rule will also require that these employers provide paid time for employees to get vaccinated and ensure all unvaccinated workers wear a face mask in the workplace. OSHA has a strong 50-year record of requiring employers to take common-sense actions to prevent workers from getting sick or injured on the job. This rule will cover 84 million employees.

Second, the Centers for Medicare & Medicaid Services (CMS) at the Department of Health and Human Services is announcing the details of its requirement that health care workers at facilities participating in Medicare and Medicaid are fully vaccinated. The rule applies to more than 17 million workers at approximately 76,000 health care facilities, including hospitals and long-term care facilities.

The Administration has previously implemented policies requiring millions of federal employees and federal contractors to be fully vaccinated. Across all three requirements, workers will need to have the necessary shots to be fully vaccinated – either two doses of Pfizer or Moderna or one dose of Johnson & Johnson – no later than January 4, 2022. OSHA also clarifies that it will not apply its new rule to workplaces covered by either the CMS rule or the federal contractor vaccination requirement. And, both OSHA and CMS are making clear that their new rules preempt any inconsistent state or local laws, including laws that ban or limit an employer’s authority to require vaccination, masks, or testing.

The announcements include:

New Vaccination Requirement for Employers With 100 or More Employees: OSHA is issuing a COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) to require employers with 100 or more employees (i.e., “covered employers”)

Get Their Employees Vaccinated by January 4th and Require Unvaccinated Employees to Produce a Negative Test on at Least a Weekly Basis:

All covered employers must ensure that their employees have received the necessary shots to be fully vaccinated – either two doses of Pfizer or Moderna or one dose of Johnson & Johnson – by January 4th. After that, all covered employers must ensure that any employees who have not received the necessary shots begin producing a verified negative test to their employer on at least a weekly basis, and they must remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed health care provider. The ETS lays out a wide variety of tests that comply with the standard. Given that vaccines are safe,

free, and the most effective way for workers to be protected from COVID-19 transmission at work, the ETS does not require employers to provide or pay for tests. Employers may be required to pay for testing because of other laws or collective bargaining agreements.

- **Pay Employees for the Time it Takes to Get Vaccinated:** All covered employers are required to provide paid time for their employees to get vaccinated and, if needed, sick leave to recover from side effects experienced that keep them from working.

- **Ensure All Unvaccinated Employees are Masked:** All covered employers must ensure that unvaccinated employees wear a face mask while in the workplace.

- **Other Requirements and Compliance Date:** Employers are subject to requirements for reporting and recordkeeping that are spelled out in the detailed OSHA materials available here. While the testing requirement for unvaccinated workers will begin after January 4th, employers must comply with all other conditions – such as providing paid time for employees to get vaccinated and masking for unvaccinated workers – on December 5th. The Administration is calling on all employers to step up and make these changes as quickly as possible.

New Vaccination Requirements for Health Care Workers: CMS requires workers at health care facilities participating in Medicare or Medicaid to have received the necessary shots to be fully vaccinated – either two doses of Pfizer or Moderna, or one dose of Johnson & Johnson – by January 4th. The rule covers approximately 76,000 health care facilities and more than 17 million health care workers – the majority of health care workers in America – and will enhance patient safety in health care settings. The rule applies to employees regardless of whether their clinical or non-clinical positions include employees, students, trainees, and volunteers who work at a covered facility that receives federal funding from Medicare or Medicaid. It also includes individuals who provide treatment or other services for the facility under contract or other arrangements. The facility types covered by the rule are hospitals, ambulatory surgery centers, dialysis facilities, home health agencies, and long-term care facilities. Today's action will help provide patients assurance about the vaccination status of those delivering care, create a level playing field across health care facilities, and help address challenges facilities have faced with staff sickness and quarantines impacting the delivery of care.

Streamlining Implementation and Setting One Deadline Across Different Vaccination Requirements:

The rules released today ensure employers know which requirements apply to which workplaces. Federal contractors may have some workplaces subject to conditions for federal contractors and other workplaces subject to the newly-released COVID-19 Vaccination and Testing ETS. To make it easy for all employers to comply with the requirements, the deadline for the federal contractor vaccination requirement will be aligned with those for the CMS rule and the ETS. Employees falling under the ETS, CMS, or federal contractor rules will need to have their final vaccination dose – either their second dose of Pfizer or Moderna or a single dose of Johnson & Johnson – by January 4, 2022. This will make it easier for employers to ensure their workforce is vaccinated, safe, and healthy and ensure that federal contractors implement their requirements on the same timeline as other employers in their industries. And,



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the newly-released ETS will not be applied to workplaces subject to the federal contractor requirement or CMS rule, so employers will not have to track multiple vaccination requirements for the same employees.