CLIENT ALERTS & INSIGHTS

OSHA to Develop Rule Requiring All Employers with 100+ Employees to Implement Vaccine Mandate

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On September 9, 2021, President Biden announced his administration's "action plan" for finding a "path out of the pandemic." President Biden has directed OSHA to develop a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. The rule will also require covered employers to provide paid time off for the time it takes for workers to get vaccinated or to recover if they are ill post-vaccination. Here is what we know about the rule pertaining to private employers as of today:

- **The text of the rule has not been released.** The White House's announcement only stated that OSHA was "developing" a rule.
- **It is unclear when the rule will be released or effective.** OSHA will implement the rule through an Emergency Temporary Standard (ETS), which means it will not involve solicitation of public comment. But, there is no guidance as to when the text of the rule will be released, nor as to when the rule will go into effect.
- **Legal challenges are likely.** The White House estimates that a vaccine mandate for all employers with at least 100 employees will impact over 80 million private sector workers. Given the broad reach of the rule and that it would be an unprecedented extension of OSHA's authority, we expect implementation of the rule to be contested.
- **Employers with 100+ employees that are not federal contractors do not need to take immediate action, but should keep abreast of developments**. As noted above, OSHA's vaccine mandate rule is under development and has not been released. Given the uncertainty of the rule's content and the timing of its implementation, as well as the strong likelihood of legal challenges, employers should not take hurried, unplanned actions in immediate response to the administration's announcement. However, potentially impacted employers should closely monitor further developments and consider beginning preemptive preparations to implement a vaccine requirement should the administration's intent become law.

Additional Mandates: Federal Contractors and Hospitals

In addition to OSHA rulemaking, President Biden also announced that he has signed an executive order requiring that all federal workers and employees of federal contractors be vaccinated. And, the Centers for Medicare & Medicaid Services (CMS) is "taking action" to require COVID-19 vaccinations for workers in health care settings that receive Medicare or Medicaid reimbursement, building on the recent vaccination requirement announced by CMS applying to nursing home staff.

We will update this article as additional information becomes available. With these efforts, the administration's earlier mandate affecting nursing homes, and OSHA's updated guidance regarding mask wearing, the federal government continues more varied efforts to impose requirements on the private sector in order to increase the vaccinated population.

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