

President Biden Orders OSHA to Issue Rule Requiring Large Employers to Mandate That Employees Get Vaccinated For COVID-19 Or Undergo Weekly Testing

By **Morris L. Hawk**

On September 9, 2021, President Biden directed OSHA to issue a rule requiring private sector employers with 100 or more employees to mandate that employees either get an approved COVID-19 vaccination or produce a negative test on a weekly basis. In addition, the rule will require that these employers grant employees paid time off to get vaccinated and recover from any post-vaccination symptoms. OSHA will be issuing an Emergency Temporary Standard to implement these requirements. Other steps announced by President Biden are as follows:

- President Biden will issue an executive order requiring vaccination for federal employees and employees of contractors that do business with the federal government. The federal government will also require that teachers and staff at Head Start and Early Head Start programs, teachers and child and youth program personnel at the Department of Defense (DOD), and teachers and staff at Bureau of Indian Education-operated schools get vaccinated.
- The Centers for Medicare & Medicaid Services (CMS) will require COVID-19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement, including hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. This expands upon CMS's prior announcement of an upcoming rule requiring vaccination for nursing home staff.
- The federal government will be rolling out a plan to make booster shots widely available, subject to final authorization of boosters by the Food and Drug Administration (FDA) and recommendations by the CDC's independent Advisory Committee on Immunization Practices (ACIP). The administration will be prepared to implement the plan by September 20, 2021.
- The federal government will use its authority under the Defense Production Act to accelerate the production of rapid COVID-19 tests and provide access to these tests, including partnering with top retailers to sell those tests at-cost for the next three months. Free testing at pharmacies will also be expanded.
- President Biden is asking that states mandate vaccination for all public school employees. He also announced that the Department of Education (DOE) is currently investigating whether states that prohibit mask mandates are violating federal law by discriminating against students with disabilities which place them at heightened risk to suffer severe illness from COVID-19. In addition, he stated that the DOE will provide additional funding to districts which have had funds withheld by states due to the districts implementing mask mandates or other COVID-19 safety measures.

For additional guidance regarding this topic, please contact one of the listed Roetzel attorneys. We will be issuing additional guidance when OSHA issues its rule for private sector employers with 100 or more employees and as additional details regarding these new federal COVID-19 initiatives become available.

Doug Spiker

Practice Group Manager
Employment Services
216.696.7125 | dspiker@ralaw.com

Aretta Bernard

Practice Group Manager
Employment Litigation & Counseling
330.849.6630 | abernard@ralaw.com

Karen Adinolfi

330.849.6773 | kadinolfi@ralaw.com

Susan Keating Anderson

Chair, Education Law Group
216.232.3595 | sanderson@ralaw.com

Bob Blackham

216.615.4839 | bblackham@ralaw.com

Michael Brohman

312.582.1682 | mbrohman@ralaw.com

Helen. S. Carroll

330.849.6710 | hcarroll@ralaw.com

G. Frederick Compton, Jr.

330.849.6610 | fcompton@ralaw.com

Amanda Connelly

614.723.2012 | aconnelly@ralaw.com

Monica Frantz

216.820.4241 | mfrantz@ralaw.com

Barry Freeman

216.615.4850 | bfreeman@ralaw.com

Morris Hawk

216.615.4841 | mhawk@ralaw.com

Philip Heebsh

419.708.5390 | pheebsh@ralaw.com

Paul Jackson

330.849.6657 | pjackson@ralaw.com

Adrienne Kirshner

216.456.3850 | akirshner@ralaw.com

Stephanie Olivera Mittica

330.849.6671 | solivera@ralaw.com

Nancy Noall

216.820.4207 | nnoall@ralaw.com