

Biden Administration Announces Details of Two Major Vaccination Policies

By [Harvey R. Linder](#)

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On Thursday, November 4, 2021, the Biden Administration announced the details of two policies mandating vaccinations for millions of Americans, aimed at “protecting workers, preventing hospitalizations, saving lives, and strengthening the economy”. Previously, the Administration implemented policies requiring millions of federal employees and federal contractors to be fully vaccinated.

First, the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) announced the details of a requirement for employers with 100 or more employees to require that each of their workers is fully vaccinated, or in the alternative, tests negatively for COVID-19 on at least a weekly basis. The OSHA rule also requires that these employers provide paid time for employees to get vaccinated and require that all unvaccinated workers wear a face mask in the workplace. This mandate will cover approximately 84 million employees.

Second, the Centers for Medicare & Medicaid Services (“CMS”) at the Department of Health and Human Services announced 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.

To make it easy for businesses and workers to comply with these new mandates, the Administration announced that the deadline for workers to receive their shots will be the same for the OSHA rule, the CMS rule, and the previously announced federal contractor vaccination requirement. Employees subject to these rules will need to have their final vaccination dose – either their second dose of Pfizer or Moderna, or single dose of Johnson & Johnson – by January 4, 2022. OSHA is also clarifying 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 new mandate includes penalties of nearly \$14,000 per violation.

By Saturday evening, November 6, 2021, twenty-seven (27) States filed lawsuits in several federal Circuits challenging these mandates. The 5th U.S. Circuit Court of Appeals granted an emergency stay of the OSHA requirement that those workers be vaccinated by January 4, 2022, or face mask requirements and weekly tests. The Court

stated that it was delaying the federal vaccine requirement because of potential “grave statutory and constitutional issues” raised by the plaintiffs.

Louisiana Attorney General Jeff Landry said the action stops President Biden “from moving forward with his unlawful overreach”. Further, he stated: “The president will not impose medical procedures on the American people without the checks and balances afforded by the constitution.”

Such circuit decisions normally apply only to states within a district — Mississippi, Louisiana, and Texas, in this case — but Mr. Landry said the language employed by the judges gave the decision a national scope.

The U.S. Labor Department’s top legal adviser said the department is “confident in its legal authority to issue the emergency temporary standard on vaccination and testing.” She said that OSHA has the authority “to act quickly in an emergency where the agency finds that workers are subjected to a grave danger and a new standard is necessary to protect them”.

The government must provide an expedited reply to the motion for a permanent injunction on Monday, followed by Petitioners’ reply on Tuesday.

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