

# CLIENT ALERT

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## Important Information Regarding COVID-19 Vaccine Mandates for Employers

The Occupational Safety and Health Administration (OSHA) and the Department of Health and Human Services (HHS) have issued various rules and guidance information regarding President Biden's COVID-19 Vaccine mandate for Employers with 100+ employees.

### Vaccine Mandate

President Biden issued a COVID-19 Action Plan on September 9, 2021. This Action Plan requires employees of organizations with 100+ employees to either be fully vaccinated or test negative once a week before coming into work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement, and HHS will provide guidance specific to HIPAA. Employers will need to be familiar with the Action Plan and OSHA's Emergency Temporary Standard as it becomes available.

### Legal Issues

OSHA is developing a rule that will require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated, and additional time off for workers to recover if they feel sick post-vaccination. Further guidance is necessary as to whether this is in addition to an employee's PTO or if the employee must use their accrued PTO.

Legal challenges to the ETS have been and will continue to be made, however, President Biden has the authority to direct OSHA to release and enforce an ETS. Employers who will be affected by this should start planning now.

The HIPAA Privacy Rule "does not prohibit any person (e.g., an individual or an entity such as a business), including HIPAA covered entities and business associates, from asking whether an individual has received a particular vaccine, including COVID-19 vaccines."

### Benefits Related

Plans and issuers must cover COVID-19 vaccines and their administration, without cost sharing, immediately once the particular vaccine becomes authorized under an emergency use authorization (EUA) or approved under a biologics license application (BLA), and according to the scope of the applicable EUA or BLA.

Benefits under the plan must be uniformly available to all similarly situated individuals and any restriction on benefits must apply uniformly to all similarly situated individuals and must not be directed at individuals based on a health factor. Accordingly, plans and issuers may not discriminate in eligibility for benefits or coverage based on whether or not an individual obtains a COVID-19 vaccination.

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Links:

[Department of Labor FAQs](#)

[Whitehouse COVID Plan](#)

[OSHA FAQs](#)