

Biden's New Action Plan Means Big Changes Ahead For Vaccine Requirements

By Jessica Summers

On Thursday, September 9, 2021, the Biden Administration rolled out its latest COVID-19 Action Plan (titled "Path Out of the Pandemic"). The Action Plan covers a wide range of areas focused on increasing vaccination rates and addressing various other COVID-19 related safety and recovery measures. **For private sector employers, the big news is that the new Action Plan, and its implementation, will require a large swath of businesses to implement specific vaccination requirements for their workforces.**

The requirements for private sector employers that are being ushered in by the new action plan breakdown into three categories:

— Employers with 100 or more employees – In the Action Plan, the Administration announced that, that Department of Labor's Occupational Safety and Health Administration (OSHA) will be issuing an Emergency Temporary Standard (ETS) requiring that private employers with 100 or more employees "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." In turn, OSHA will also be developing rules to require that covered employers provide paid time off for employees to receive, or recover from, a COVID-19 vaccine. The Administration estimates that the new requirements will apply to more than 80 million workers.

At this time it is unclear when the ETS outlining the parameters of the new requirement will be released. The last COVID-related ETS that OSHA was tasked with took nearly five months to complete. However, that was at the beginning of the Administration and in the midst of the vaccine rollout, so it is likely this ETS will be rolled out much more quickly. ***While we wait for the ETS to be released, employers with 100 or more employees that don't already have a policy on vaccinations should start to consider how they can prepare themselves and their workforces for the new requirements.***

— Employers with federal government contractors – On September 9, the President signed an Executive Order requiring that all federal contractors (with the exception of those who must be accommodated as a matter of law) must be vaccinated against COVID-19. Under the Administration's prior policy, federal contractors were required to be vaccinated or submit to regular testing in lieu of vaccination. The latest Order removes the option for testing in lieu of vaccination. The individual agencies will be responsible for rolling out the requirements for their contractors. If the rollouts of the prior vaccine or test rules are any indication, these changes may occur with little advance notice to contractors. ***Accordingly, businesses with federal contractors should take advance steps, such as determining whether any unvaccinated employees may be eligible for a reasonable accommodation, so that they can quickly pivot from the existing vaccine or test framework to the new vaccine only requirement.***

— Employers of healthcare workers that receive Medicaid or Medicare reimbursements – In the Action Plan, the Administration also announced that the Centers for Medicare & Medicaid Services (CMS) will also be implementing rules to require vaccines for employees that work in health care settings that receive Medicare or Medicaid reimbursements. ***Any employers that have healthcare workers and receive Medicare or Medicaid reimbursements should be on the lookout and prepared to implement the new CMS rules. While many employers in this category have already implemented vaccine requirements for their workers, it will be important to determine whether any changes will be needed to meet the standards set by CMS.***

Bottom line – the new developments outline in the Action Plan will mean big changes for many employers, but we are still waiting on the full details. In the meantime, employers who will be covered by any of these

new rules should do what they can to put themselves in the best position to smoothly and efficiently implement any new requirements.

Stay tuned for more updates and please do not hesitate to contact us if you need assistance planning for any of these developments.