

President Biden's Proposed COVID-19 Plan May Push Employers to Mandatory Vaccination Policies - Or is it Much Ado About Nothing?

By: Theresa Nelson on September 10, 2021 on graydon.law

On September 9, 2021, President Biden announced a new plan to combat the on-going COVID-19 pandemic that caused many employers to sit up and take notice. President Biden's plan seeks to get more Americans vaccinated by implementing various mandatory vaccination and testing requirements.

If an employer hasn't implemented a mandatory vaccination policy, what should they do? They don't have to do anything because the plan does not set forth any law or regulation for mandatory vaccinations for testing requirements for private employers. However, if employers have not implemented a mandatory vaccination policy or testing policy, it may be time to start the discussion because the plan hints the requirement is forthcoming.

The President's plan stated that the Department of Labor's Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require unvaccinated workers to produce a negative test result on a weekly basis. It is important to understand that the President's plan is not a final rule on this issue, but provides that OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. If implemented, it is reported that the new vaccination requirement will impact over 80 million workers in private sector businesses with 100+ employees.

So, when will this mandatory vaccination ETS rule be released and implemented? That remains to be seen. OSHA published an ETS related to COVID-19 in June 2021 based on the Presidential Executive Order on Protecting Worker Health and Safety issued January 21, 2021.

To further complicate the issue, the new plan also stated it will provide paid time off for vaccination for most workers, but no details on how much paid time off will be provided or how the time will be funded was provided. Not entirely shocking, threats of litigation over

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this proposal began swirling almost immediately after the plan was announced.

In addition to private sector mandates, through Executive Orders, the President built on previous requirements for federal employees to now require all federal executive branch workers to be vaccinated and extended the vaccination requirement to employees of contractors doing business with the federal government. Both Executive Orders provide for the implementation of these requirements through subsequent steps and policies yet to be established.

Finally, the new plan also seeks to require health care workers in most health care settings that receive Medicare or Medicaid reimbursement to be vaccinated. This action also builds upon the vaccination requirement for nursing facilities recently announced by CMS, and will apply to nursing home staff as well as staff in hospitals and other CMS-regulated settings. This is intended to include clinical staff, volunteers, and staff who are not involved in direct patient, resident, or client care. Ultimately, the new plan's vaccination requirements will cover a majority of health care workers.

With each challenge presented through the COVID-19 pandemic, the President's mandatory vaccination mandates proposed in this new plan presents a potential challenge for employers to work through. Graydon is here to help. Our Labor & Employment attorneys are available to discuss whether these new mandates apply to your business as well as other legal considerations for any such mandates.