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President Biden's Mandatory Vaccine Policy for Federal Workers, Federal Contractors and Private Employers

At the beginning of Summer 2021, President Biden planned to revel in America's "Summer of Freedom," but the Delta variant's spread halted these celebrations. Many employers have been questioning how to best implement COVID-19 safety precautions for their workforce, including possible mask and mandatory COVID-19 vaccination policies. President Biden answered the COVID-19 vaccination question for most employers on September 9, 2021, when he announced an unprecedented action plan to stop the spread of COVID-19 by mandating vaccines for federal employees, contractors working with the federal government, certain private employers, and healthcare providers receiving federal funding. The plan is outlined in the White House publication entitled "[Path Out Of The Pandemic – President Biden's COVID-19 Action Plan](#)" (the "Plan").

To start, President Biden is requiring COVID-19 vaccines for all federal workers under his [Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees](#). Unlike his previous stance on federal employee vaccination, this new Executive Order does not include an option for weekly COVID-19 testing in lieu of getting vaccinated; however, it does allow for exemptions as required by law for religious or medical reasons. According to the Plan, the Safer Federal Workforce Task Force ("Task Force"), established by President Biden's Executive Order 13991 of January 20, 2021 (Protecting the Federal Workforce and Requiring Mask-Wearing), will issue further guidance for agencies by September 16, 2021.

In addition, the mandatory vaccination standards will "be extended to employees of contractors that do business with the federal government." To this end, on September 9th, the President also signed an [Executive Order](#) entitled "Ensuring Adequate COVID Safety Protocols for Federal Contractors." This Executive Order directs the Task Force to "provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations." It further requires federal contracting agencies to "ensure that contracts . . . include a clause that the contractor and any

subcontractors (at any tier) shall incorporate into lower-tier subcontracts,” and which must “for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance).” The Executive Order does not apply to manufacturers or suppliers of goods, to grants, to contracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act, or to employees who perform work outside the United States or its outlying areas.

It is not yet clear whether the Executive Order’s vaccination mandate will apply to a federal contractor’s entire workforce, including remote employees who do not have in-person interactions with other co-workers, and employees who do not perform contract-related services. The Task Force is expected to issue its guidance for federal contractors by September 24, 2021, and, by October 8, 2021, contracting agencies are to take steps to include the clause in contracts entered into on or after October 15, 2021.

President Biden also has directed the U.S. Department of Labor (“DOL”) to issue an emergency rule that requires all employers with 100 or more employees to mandate vaccination or produce a negative COVID-19 test result at least one per week. Although the DOL’s rule has not been issued yet, it would apply to two-thirds of America’s workforce and could result in a \$14,000 fine per violation. President Biden’s plan will also require employers to offer paid time off for employees seeking vaccination and recovering from the side effects of the vaccine.

The Plan further seeks to impose vaccination requirements on healthcare facilities that receive federal funding. The Plan calls on the Centers for Medicare & Medicaid Services (“CMS”) to expand vaccination requirements to workers in most healthcare settings that receive Medicare or Medicaid reimbursement, such as hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. The Plan thus builds on the vaccination requirement for nursing facilities that CMS announced previously, and it will apply to nursing home staff as well as staff in hospitals and other CMS-regulated settings, including clinical staff, individuals providing services under arrangements, volunteers, and staff who are not involved in direct patient, resident or client care. CMS is currently developing an Interim Final Rule with Comment Period that will be issued in October.

Finally, the Plan expands protections to schools by requiring vaccination for employees covered by the Head Start Program and schools operated by the Department of Defense and the Bureau of Indian Education.

If you have questions about your organization’s management of COVID-19, including how to comply with President Biden’s new COVID-19 Action Plan or its mandatory vaccination requirements, please contact your Kutak Rock attorney or a member of the firm’s [National Employment Law Group](#). You may also visit us at www.KutakRock.com.

