

Employers with Federal Contracts Required to Ensure Employees are Vaccinated

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On September 9, 2021, President Biden announced via an Executive Order that federal contractors and subcontractors will have to require their employees to be fully vaccinated by December 8, 2021, with very limited exceptions.

Following this proclamation, a White House task force on safety and other federal agencies have added some clarification on what federal contractors (and their employees) must do in the very near future to comply with President Biden's recent Executive Order before December 8, 2021. This clarification is particularly important for employers who have unvaccinated workforces or many unvaccinated employees, as the timeline for ensuring compliance and vaccinated staff is very short. The task force announced limitations on the scope of work performed in federal contracts, as well as announcing that employees on these contracts will no longer be able to 'opt out' of vaccination with weekly testing, as they currently may do.

In addition, many employers—especially large employers with 100 or more employees—eagerly await the formal announcement of an Emergency Temporary Standard by the Occupational Health and Safety Administration ("OSHA"), which will certainly impact what employers must do. We are hopeful that the OSHA ETS will address questions employers have been asking since September 9, 2021 – including what kind of time off will an employer have to give to an employee to become vaccinated, and who will pay for tests for an employee who refuses or is exempt from receiving the vaccine. Even if the ETS answers these questions, however, an immediate challenge to the rule is expected, based on constitutional grounds.

With all these changes happening each day, it is especially important for employers (especially federal contractors) to proactively reach out to legal counsel to prepare for these new requirements and ensure that they are ready and prepared to timely comply, should these new orders and rules remain in effect. Failing to do so could result in otherwise avoidable penalties or fines—or, in the worst-case scenario, potential suspension of disbarment as a federal contractor.

We encourage all employers to act now and update their policies as appropriate. Our Labor & Employment Team at Sandberg Phoenix regularly advises small and large employers in a variety of different industries on difficult and complicated workplace issues and challenges posed by COVID-19. Contact us today to help you prepare for what's to come.