



Workplace Safety and Environmental Law Alert Blog

OSHA to Issue New COVID Emergency Temporary Standard Mandating COVID-19 Vaccination, Testing, Paid Time Off

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By [James L. Curtis](#), [Benjamin D. Briggs](#), [Adam R. Young](#), [Patrick D. Joyce](#), [A. Scott Hecker](#), [Ilana Morady](#), [Daniel R. Birnbaum](#), and [Craig B. Simonsen](#)



Seyfarth Synopsis: President Biden announced a six-pronged, “**comprehensive national strategy**” to combat COVID-19, which will include a second OSHA Emergency Temporary Standard requiring vaccines or testing.

On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard (ETS), its first in decades, relating to COVID-19 that only applied to health care employers. On September 9, 2021, the Biden Administration announced the framework for a second OSHA ETS that will apply to all employers with 100

or more employees, and will mandate COVID-19 vaccination or weekly testing for employees who choose not to get vaccinated. The announcement explains:

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 any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.

No draft regulations have been released, and employers have no indication of compliance dates. When issuing an ETS, OSHA does not need to pursue notice-and-comment rulemaking; however, the White House's Office of Information and Regulatory Affairs held over 40 stakeholder meetings (known as "12866 meetings," after **Executive Order 12866**) prior to OSHA's issuing its healthcare ETS, the development of which took approximately six months. OSHA state plans will have 30 days to adopt their own regulations that are similar or more restrictive than OSHA's vaccine ETS. The new OSHA ETS will be part of a larger White House plan intended to address the ongoing COVID-19 pandemic and high rates of infection, hospitalization, and death.

The President noted that there are still nearly 80 million Americans eligible to be vaccinated who have not yet gotten their first shot. The President's plan will reduce the number of unvaccinated Americans by using "regulatory powers and other actions to substantially increase the number of Americans covered by vaccination requirements—these requirements will become dominant in the workplace." In addition, the plan will provide "paid time off for vaccination for most workers in the country." The regulations may put employers on the hook for those payments.

The six prongs of the White House Plan are:

1. Vaccinating the Unvaccinated
2. Further Protecting the Vaccinated
3. Keeping Schools Safely Open
4. Increasing Testing & Requiring Masking
5. Protecting Our Economic Recovery

6. Improving Care for those with COVID-19

Specifically, with respect to COVID-19 vaccines, the President's plan will:

- Require All Employers with 100+ Employees to Ensure their Workers are Vaccinated or Tested Weekly
- Require Vaccinations for all Federal Workers and for Millions of Contractors that Do Business with the Federal Government
- Require COVID-19 Vaccinations for Over 17 Million Health Care Workers at Medicare and Medicaid Participating Hospitals and Other Health Care Settings
- Require Staff in Head Start Programs, Department of Defense Schools, and Bureau of Indian Education-Operated Schools to be Vaccinated
- Call on Large Entertainment Venues to Require Proof of Vaccination or Testing for Entry
- Require Employers to Provide Paid Time Off to Get Vaccinated

If you're struggling with a company vaccine policy, see Seyfarth's **Vaccine Policy Playbook** – An “essential resource in designing, communicating, and deploying your company's vaccine policy.” The Playbook guides employers through types of mandates, policy creation and considerations, such as reporting, incentives, and local mandates, and perhaps most importantly, defining an accommodation strategy that reduces the risk of ADA and EEOC claims.

For more information on this or any related topic, please contact the authors, your Seyfarth attorney, or any member of the **Workplace Safety and Health (OSHA/MSHA)** Team.

