



# Coronavirus Update

Sept. 10, 2021

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## Feds set to mandate vaccines, but leave more questions than answers

The White House announced yesterday the Biden administration's [plan](#) to boost vaccination rates and slow the continued spread of COVID-19. This plan formally shifts the vaccination burden from individuals to *employers*, requiring many employers to mandate vaccines for their employees, and forcing many more employers to choose between a vaccine mandate or frequent testing of unvaccinated employees.

At present, we have only the skeletal outline of the administration's plan; rules from at least a pair of federal agencies tasked with implementing the administration's plans are weeks away. But here's what's coming:

- Federal contractors must mandate the vaccine for their employees.
- Healthcare providers receiving federal healthcare dollars must mandate the vaccine for their employees.
- Other employers with at least 100 employees must either mandate the vaccine for their employees or require at least weekly testing of the unvaccinated. These employers will be required to provide paid time off for employees to get vaccinated and to recover from any side effects the employees experience from the vaccine.

Below we examine the key points of the plan and areas for employers to be aware of.

### Private employers with 100 or more employees

The obligations on these employers will come via an Occupational Safety and Health Administration (OSHA) emergency temporary standard (ETS). OSHA says its ETS will be issued "in the following weeks." Covered employers who ignore the standard could face penalties of up to \$14,000 per violation, potentially increased to \$140,000 per violation for repeat offenders.

At the moment, there is no guidance on which employees are counted, when the count is made, and whether the count requires aggregation of employees across multiple work sites or across a controlled group of corporations, trades and businesses.

For employees who choose to remain unvaccinated, who bears the costs associated with the weekly COVID-19 tests – the employer or the employee? Given the administration's goal of increasing the vaccination rate, it is possible that unvaccinated employees will bear these expenses.

**Lockton comment:** The recent White House statement indicates that top retailers which sell at-home, rapid COVID-19 tests will offer to sell those tests “at-cost” for the next three months, and retail pharmacies will increase the number of locations at which they offer free testing. Today, the IRS reminded employers and employees that health flexible spending accounts, health reimbursement arrangements and health savings accounts may reimburse the cost of testing kits on a tax-free basis.

## Federal contractors

The administration will require all federal contractors to mandate vaccinations for their employees beginning Oct. 15. Initial guidance on this requirement is due in two weeks. That guidance is expected to identify which contractors fall under the mandate and include required protocols and a description of any applicable exceptions (e.g., employees who cannot or should not be vaccinated for health reasons).

**Lockton comment:** The new mandate will apply to any new contract, new solicitation for a contract, extension or renewal of an existing contract, and exercise of an option on an existing contract if the contract is for:

- Procuring services, construction, or a leasehold interest in real property
- Services covered by the Service Contract Act
- Concessions, including any concessions contract excluded by Department of Labor regulation
- Goods or services in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public.

The executive order, too, leaves many questions unanswered.

## Healthcare providers

The vaccination mandate for employees of healthcare providers receiving federal healthcare dollars will be fleshed out by the Centers for Medicare & Medicaid Services (CMS). That mandate will require vaccinations for workers in most healthcare settings such as hospitals, dialysis facilities, ambulatory surgical settings and home health agencies. Employees subject to the mandate will include nursing home staff, home healthcare staff, hospital staff and staff in other settings such as clinical staff, and volunteers.

## What now? (And a webcast!)

We recognize that much is left to be learned in terms of the specifics as to how this plan will be carried out. As information is made available, we will bring the details to you. Please join us Tuesday, Sept. 14 for a [webcast](#) where Lockton experts will outline the administration’s recent announcements, discuss where we expect OSHA and CMS to take the mandates and other requirements, and offer tips for communicating with employees and preparing for what comes next.

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