

Eye on Washington

Regulatory Update



President Biden Issues COVID-19 Executive Order – Vaccine Mandate

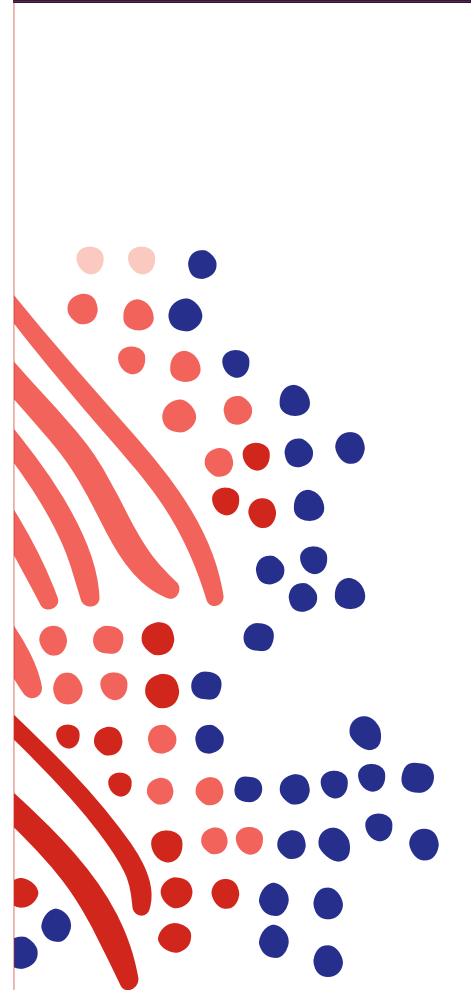
On September 9, 2021, President Joseph Biden announced an Executive Order and related actions implementing new policies to address the COVID-19 pandemic. Several of the policies may directly affect employers and require action:

- The Executive Order will require all federal executive branch workers to be vaccinated; and directed that this standard be extended to employees of contractors that do business with the federal government.
- All private-sector employers with more than 100 employees will be required to ensure that their workers are either vaccinated or are tested weekly for COVID-19.
- The U.S. Occupational Safety and Health Administration (OSHA) will issue an Emergency Temporary Standard (ETS) to implement this requirement. The OSHA rule will also require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated or to recover from any ill effects of the vaccination.
- Vaccination requirements will also apply to health-care workers at Medicare and Medicaid participating hospitals and other health-care settings that receive Medicare or Medicaid reimbursement.

Many details will not be available regarding these requirements — including the effective date — until the OSHA ETS or other guidance is issued. Typically, such mandates involve appropriate time for implementation, although addressing the COVID-19 pandemic may be viewed as urgent.

The Biden Administration also announced other provisions focused on economic recovery, including the following:

- **Economic Injury Disaster Loan Program:** The announcement included enhancements to the Economic Injury Disaster Loan (EIDL) program, which provides long-term, low-cost loans to small businesses, generally increasing the amount of funding a small business can borrow through this program from \$500,000 to \$2 million.
- **Paycheck Protection Program (PPP) Loan Forgiveness:** The Administration announced improvements to the PPP loan forgiveness process. The Small Business Administration (SBA) will send a pre-completed application form to borrowers, who can then review, sign and return the application to the SBA, to initiate the review and forgiveness process.



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MAY 2021 EEOC Vaccination Guidance May Be Adjusted

The September 9, 2021 White House announcements may necessitate changes to guidance issued by the Equal Employment Opportunity Commission (EEOC) for employers regarding COVID-19 vaccinations in May 2021. This guidance covered four areas:

- (1) Mandatory vaccination policies;
- (2) Accommodations;
- (3) Information about employee vaccination status; and
- (4) Vaccination incentives.

Brief highlights follow.

(1) Mandatory Vaccination Policies

In its May 2021 guidance, the EEOC reaffirms that employers can require that their employees receive the COVID-19 vaccine as a condition of accessing the workplace. However, it stresses that employers must comply with their obligation to explore reasonable accommodations for employees who cannot be vaccinated due to disabilities or religious beliefs.

(2) Accommodations

Employers have options to meet their accommodations obligations under Title VII and the ADA, which were explained in the EEOC guidance, for example:

- Providing personal protective equipment (PPE);
- Ensuring the employee is able to work at a safe social distance;
- Offering modified or staggered shifts;
- Subjecting the employee to periodic COVID-19 tests;
- Permitting teleworking; and
- Exploring reassignment.

(3) Information About Employee Vaccination Status

The guidance clarified that information about an employee's COVID-19 vaccination status is considered confidential medical information under the ADA. Therefore, while employers are allowed to request or require confirmation of vaccination from employees, employers are also required to keep such documentation or other confirmation confidential. In addition, this information must be kept separate from an employee's personnel file.

(4) Vaccination Incentives

The EEOC clarified that employers are allowed to promote vaccination in several ways. Incentives may be offered to employees to voluntarily confirm their vaccination status or to receive a vaccination. However, any incentives must not be so substantial as to be coercive.

[The May 2021 EEOC guidance may need to be adjusted based on the September 9 White House Executive Orders and announcements.](#)

Planning and Possible Actions for Employers

Employers should generally consult with appropriate Legal, Human Resources, and other professionals to consider possible actions that may be warranted, such as:

- Vaccination and weekly testing requirements;
- The use of masks in employer facilities;
- Daily employee self-assessment health checks;
- Visitor entry screenings;
- Domestic and international travel policies; and
- Daily office cleanings.

ADP will continue to monitor and advise on this important topic. Employers should watch for possible further announcements and details.

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