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# Federal COVID Action Plan Announced

## Description

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On September 9th, the President announced a COVID-19 Action Plan (the "Plan") and released two orders that contain surprisingly broad measures. The Plan will impact many businesses and organizations across the nation.

Of particular note is:

### **1. Large Private Employer Testing Mandate.**

According to the announcement (no executive order or other binding authority exists yet), OSHA will issue an emergency temporary standard to implement a rule requiring all employers with more than 100 employees mandate that their employees produce a negative COVID-19 test result before coming to work unless the employer has "ensured" the employee is fully vaccinated. To be clear, there is no indication large employers must mandate the vaccine. Some may choose to do so to avoid the headache of collecting test results. It was also announced that OSHA will release a requirement that these larger employers pay for time off to get the vaccine and recover from side effects. The Plan does not indicate when OSHA may implement the rule or detail the proof employers will need to view or collect to establish that employees are fully vaccinated. It would also appear that because the requirement of vaccination or testing applies to those "coming to work", remote workers would not be subject to the requirement. While the Plan requires employees to receive paid time off to get the vaccine and recover, it does not indicate if such time is in addition to other available paid time off which the employer could use for the vaccination.

### **2. Federal Contractor Vaccine Mandate.**

Under the executive order released September 9, 2021, the Safer Federal Workforce Task Force ("Task Force") will release guidance regarding COVID safety measures by September 24, 2021 (the "Guidelines"). [View the executive order here.](#) The Federal Acquisition Regulation will be amended to require all new or renewed federal contracts contain a clause requiring the contractor to follow those Guidelines (the "Clause") and by October 8, 2021, agencies are required to take steps to require that the contracts entered into or renewed after October 15, 2021 that are not subject to Federal Acquisition Regulation include the Clause. Federal contracts and renewals covered by the order include:

- a. a procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;
- b. a contract for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq;
- c. a concessions contract, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
- d. a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

This order does not apply to: (i) grants; (ii) tribal contracts; (iii) smaller value contracts (less than the simplified acquisition threshold); (iv) to employees working outside the United States; and (v) subcontracts solely for the provision of products.

According to the announcement (not the order), the Clause will require that workplaces where employees or contractors are working on covered contracts implement vaccine mandates. There was no mention of a testing alternative in the announcement, so it will be important to see what the Guidelines say.

### **3. Federal Government Worker Mandate.**

According to a second executive order released September 9, 2021, each executive agency (defined in 5 U.S.C. 105 excluding the Government Accountability Office) must implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. The Task Force must implement guidance on this order within 7 days. [View the executive order here.](#)

### **4. Healthcare Worker Vaccine Mandate.**

The Plan announced the Centers for Medicare & Medicaid Services (‘‘CMS’’) is taking actions to require COVID-19 vaccinations for workers in ‘‘most’’ health care settings that receive Medicare/Medicaid reimbursement, including but not limited to hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. CMS announced that emergency regulations requiring vaccinations for nursing home workers will be expanded to include hospitals, dialysis facilities, home health agencies and other operations as a condition for participating in the Medicare and Medicaid programs. CMS indicated that a Final Rule will be published in October for comment.

### **5. Masking Requirements.**

The Plan leaves existing masking requirements in place with respect to public transportation (such as planes, trains, ferries and buses) but double fines for those who violate the masking requirements.

There are many unanswered questions, some of which we expect to be resolved in some part in the coming weeks. It is also anticipated that there will be some lawsuits filed to attempt to block parts of the Plan. Businesses and other organizations are encouraged to coordinate with their counsel regularly when attempting to implement policies to comply with the Plan. [Click here to view the full COVID-19 Action Plan.](#)

The [Employment & Labor Practice Group](#) at Partridge Snow & Hahn is available to answer questions about the Plan.

#### **Date Created**

September 10, 2021