# Analyzing the Forthcoming Osha COVID-19 Vaccine Requirement

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On September 9, 2021, President Biden announced a new plan to combat the COVID-19 pandemic. Known as the "Path Out of the Pandemic," the plan contains six major strategic points that the president hopes will help advance the country's pandemic recovery. The six strategic points outlined in President Biden's plan to promote the nation's exit of the COVID-19 pandemic are: (1) Vaccinating the Unvaccinated; (2) Further Protecting the Vaccinate; (3) Keeping Schools Safely Open; (4) Increasing Testing and Requiring Masking; (5) Protecting Our Economic Recovery; and (5) Improving Care for those with COVID-19.

The first prong of the administration's, "Vaccinating the Unvaccinated," has proven to be the most controversial, and directly impacts over 80 million private sector workers. With this initiative, President Biden is requiring all private sector employers with over 100 employees to ensure that their workforce is fully vaccinated. Alternatively, employees must produce a negative COVID-19 test result at least once a week prior to coming into work. President Biden is relying on the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) to develop the rule, implement, and enforce it through issuing an Emergency Temporary Standard (ETS). Along with the required vaccine mandate for private sector workers, President Biden instructed the DOL to require employers to provide employees with paid time off to get vaccinated. This instruction aims to boost vaccine percentages across the nation with the provided incentive.

According to the White House, multiple notable companies such as Disney, Fox News, Tyson Foods, and United Airlines already incorporated a vaccine requirement for their workers. Tyson Foods implemented its requirement at the beginning of August and has seen a 28% increase in the number of employees who have received at least one shot. Additionally, United Airlines saw more than half of its unvaccinated employees receive a vaccination once the business announced the requirement and deadline.

The national vaccine mandate, however, contains exceptions. The United States Equal Employment Opportunity Commission (EEOC) maintains that:

Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations.

Accordingly, employees may choose not to receive the vaccine under the recent requirement, and cannot face termination, if the vaccine would further harm a preexisting disability or runs counter to sincerely held religious beliefs. For individuals that opt into the testing option, they must produce a negative result at least once a week prior to coming into work.

Officials recommend employers be proactive prior to the imminently anticipated implementation of the OSHA ETS mandate and ensure that their employees are aware of the forthcoming vaccine requirement and exemptions. Due to the delicate nature of the COVID-19 vaccine requirement, if an employee believes he or she qualifies for an exemption based on medical history or religious beliefs, or if an employee resists the requirement, employers may request proof that the employee qualifies for an exemption. Such proof typically will take the form of a signed certification from a physician or religious leader. Importantly, employers should maintain any medical documentation or other confidential information concerning vaccine exemptions in separate, secured files.

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