

Electronic Alert

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Federal Executive Order Requires Private Business with 100 or More Employees to Mandate Vaccines or Weekly Testing Before Their Employees Can Return to Work

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Last week, President Biden signed an executive order that required all private sector employers with 100 or more employees to mandate either that their employees be fully vaccinated against COVID-19 or that their employees provide at least one negative COVID-19 test per week before reporting to work.

The U.S. Occupational Safety and Health Administration (OSHA) will promulgate a rule for enforcing the order. Violations of the rule could result in fines of up to \$14,000 per day. Indications are that the OSHA rule will be issued in two to three weeks. Once the federal rule is adopted, Oregon OSHA will adopt a rule that aligns with the federal rule within 30 days.

President Biden signed similar orders that apply to federal employees, federal contractors, workers in healthcare facilities that receive Medicare and Medicaid reimbursements, and teachers and staff in Head Start and Early Head Start programs as well as other federal education programs. Workers covered by those mandates will not have a testing alternative.

Many more details will emerge as OSHA drafts its rule. In the meantime, here are a few things for employers to keep in mind and be prepared for:

Deadlines

The deadline for employers to comply with the rule is still unknown. More details are expected when OSHA issues its rule in the coming weeks. In the meantime, employers are still permitted to encourage their employees to get vaccinated or implement their own vaccine mandate ahead of the federal requirements.

Accommodations

The rule's testing alternative for employers with 100 or more employees will likely suffice as a reasonable accommodation for those with a disability or sincerely held religious belief that prevents them from getting vaccinated. Because there will be no testing alternative for workers in healthcare settings receiving Medicare and Medicaid reimbursements, these employers will need to engage in the interactive process for employees who request a medical or religious exception.

Employees covered by other federal mandates do not have a testing alternative. But if an employee requests an accommodation based on disability or religion, employers should evaluate whether testing is a reasonable accommodation. Employers should engage in the interactive process with their

employees if they request an accommodation.

Paid Time Off

The OSHA rule that applies to employers with 100 or more employees will also require that employers provide paid time off to employees for the time it takes to get vaccinated and to recover from side effects.

Under state and federal law, employers are required to pay their non-exempt employees for the time spent receiving COVID-19 testing during the workday, and employers may also be required to pay non-exempt employees if they receive their testing on a non-work day.

Testing Availability & Costs

The OSHA rule will likely drive a surge in the demand for testing. It is not yet known whether the supply of testing can keep up. It is also not known who will shoulder the burden of the cost of testing—insurance companies, employers, or the government. Employers should note that Oregon law makes it unlawful for an employer to require an employee to pay for a required medical exam unless the exam is required pursuant to a collective bargaining agreement, state or federal statute, or city or county ordinance. Stay tuned for more information on who will be responsible for the cost of testing.

We will follow up with a separate E-Alert once the OSHA rules are available. In the meantime, employers should seek counsel as they prepare to comply with the federal requirements or if they wish to implement their own vaccination mandates.

For questions about vaccination mandates or for any other matters relating to COVID-19 in the workplace, contact Amy Angel at 503-276-2195 or aangel@barran.com.

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