

Information Memo

TO: State Staff
FROM: Emily McBride
DATE: Thursday, November 4, 2021
SUBJECT: Summary of Biden Administration (OSHA) COVID Shot-or-
Rule



Test

Summary: In early September, President Biden announced that his administration would be issuing a series of COVID vaccine mandates, including one for private businesses employing 100 or more employees.

The private sector has been awaiting the Biden Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) to issue their “rule” outlining exactly how this mandate would work and how it would be enforced for businesses. That rule was issued today.

Details and FAQs: *Calling COVID a “grave danger,”* the Biden administration on Thursday issued an emergency temporary standard (ETS) mandating vaccinations or at least weekly testing for workers of large employers. The measure marks the first time OSHA has mandated vaccination for any disease.

- **Which employers must comply?**

- The standard applies to businesses with 100 or more employees “firm or company wide,” meaning the 100 employee threshold encompasses companies with different numbers of employees in different states.
- Centers for Medicare and Medicaid Services (CMS) rules have been issued requiring vaccination of all healthcare workers at its participating facilities.
- Earlier vaccine mandates cover federal government workers and federal contractors.
- A separate pandemic-related emergency rule covers healthcare workers (issued in June).

- **What are the compliance deadlines?**

- The standard will take effect by Friday (11/5/21) when it is published in the Federal Register. The standard contains two significant deadlines:
 1. By December 5, employers must have their compliance program in place, offer paid time off for vaccinations, and require unvaccinated workers to wear masks.
 2. By January 4, workers must be vaccinated or start being tested weekly.
- Employees will need up to six weeks to be fully vaccinated, depending on which vaccine is chosen.
- The two-month lead time is an apparent victory for employers who asked for the shot requirement to be delayed until after the holiday shopping and travel season.

- **When does the standard expire?**

- As an ETS, the mandate is in effect for six months (according to the Occupational Safety and Health Act). After that, OSHA must replace it with a permanent standard.

- **What happens if a company doesn't comply?**

- If a company is inspected and the employer can't produce records showing the firm is following the ETS, OSHA has up to six months following that inspection to issue citations.
- Each “serious” violation of the standard could result in a maximum fine of \$13,653. The cap for willful or repeat violations is \$136,532. These fines would be raised under the Build Back Better Act, if passed, for all OSHA violations to \$70,000 and willful/repeat to \$70,000.
- After an employer is cited, the business can try to reach a settlement with OSHA and perhaps get a lower penalty. They can also file an appeal with an independent judicial panel.

- **Who pays for testing?**

- Workers are expected to pay for their own testing.
- Employers don't need to pay for tests unless there are other laws or collective bargaining agreements requiring employers to pay for testing.