

Biden Orders Vaccination Mandates for Larger Employers, Federal Workforce

Under upcoming rule, companies with more than 100 employees must require vaccinations or weekly testing

By Roy Maurer
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President Joe Biden announced Sept. 9 a series of proposals (<https://www.whitehouse.gov/covidplan/>) to combat the COVID-19 pandemic more aggressively, including plans for a new rule requiring employers with 100 or more employees to mandate that their workers be vaccinated or undergo weekly testing.

The president also signed orders stipulating that most federal employees and federal contractors, as well as most health care workers across the country, be vaccinated against COVID-19.

Biden said the Department of Labor's Occupational Safety and Health Administration (OSHA) is developing an emergency temporary standard directed at private-sector businesses with 100 or more employees that is estimated to impact over 80 million workers.

The employers will also have to give workers paid time off to get vaccinated or recover from any side effects of getting vaccinated. Employers that don't comply with the vaccine mandate or paid-time-off requirement can face fines of up to \$14,000 per violation. The rule will be issued in the coming weeks.

Biden also signed an executive order requiring most federal employees and federal contractors to get the COVID-19 vaccine, removing the option to instead undergo regular testing.

Federal employees and contractors will have about 75 days to get fully vaccinated from the time the executive order is signed, officials said. The vaccine requirement will include exemptions for individuals with disabilities and for those who refuse the vaccination on religious grounds.

Health care workers in most settings that receive Medicare or Medicaid reimbursement are also covered under the executive order, applying to approximately 50,000 providers and covering about 17 million health care workers across the country.

In all, the new mandates cover about 100 million workers, or two-thirds of all workers in the U.S., officials said.

The executive orders and administration response come as the country is experiencing a rise in COVID-19 infections. The U.S. is recording roughly 150,000 new cases of the virus and about 1,500 fatalities a day, up from an average of 300 deaths each day just a few months ago. There are around 80 million Americans eligible to be vaccinated who have not yet gotten their first shot.

"We can and we will turn the tide on COVID-19," Biden said. "These measures will take time. But if we implement these measures, I believe that in the months ahead we can reduce the number of unvaccinated [individuals], decrease hospitalizations and deaths, and keep businesses open. We will protect vaccinated workers from unvaccinated co-workers."

FEATURED RESOURCE HUB PAGE



COVID-19 Vaccination Resources

(www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx)

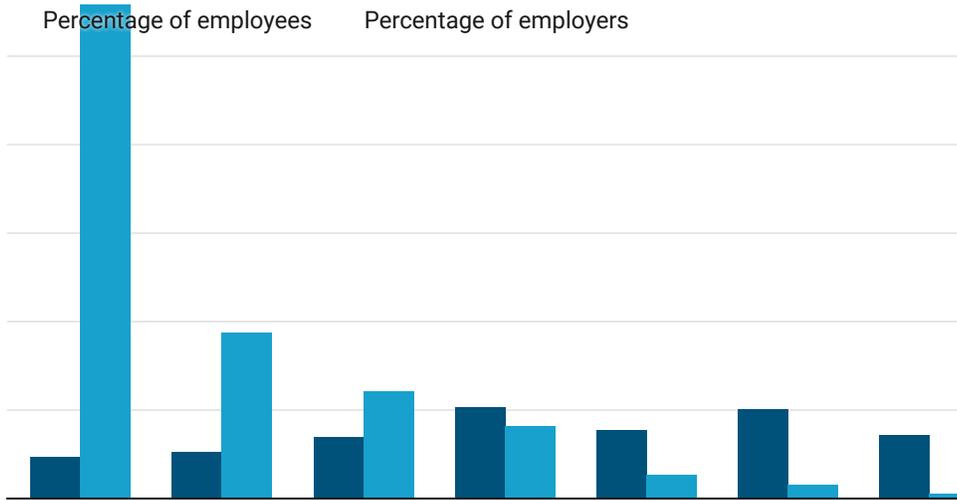
Feedback

Biden noted that some of the biggest companies, including United Airlines and Tyson Foods, are already requiring vaccination for all employees.

"Many of us are frustrated with the 80 million people who are still not vaccinated," he said. "My message to the unvaccinated: What more do you need to see? We've made vaccinations free, safe and convenient. We've been patient, but our patience is wearing thin."

Distribution of U.S. Private-Sector Employees and Employers

Biden's proposed vaccination mandate would affect employers with 100 or more employees, representing about two-thirds of private-sector employees (80 million workers), but only around 2.5 percent of private-sector employers (133,000 companies).



Feedback

Reaction

Research from the Society for Human Resource Management (www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/covid-vaccine-research.aspx) (SHRM) found that 28 percent of employed Americans say they won't get the COVID-19 vaccine even if it costs them their job.

The presidential announcement "is a real game changer for many employers," said Steve Bell, a partner at the international law firm Dorsey & Whitney in Denver. "The fact that the largest employer in the U.S. is mandating vaccines will give comfort to private employers that have been hesitant to require vaccines. It may also set the standard for what a reasonable employer should be doing in the face of this continuing epidemic."

Chelsea Smith, a labor and employment attorney in the Oklahoma City office of Hall Estill, added that private-sector employers should seek legal advice and be sure to craft a mandatory vaccine policy that provides for exemptions for people with qualified disabilities, as defined under the Americans with Disabilities Act, and for people with sincerely held religious beliefs, as defined under Title VII of The Civil Rights Act.

"This is the first vaccine mandate ever applicable to private employers," said Kathryn Bakich, health compliance practice leader and senior vice president at employee benefits consulting firm Segal in Washington, D.C. "Employers are moving toward mandatory vaccination policies at great speed. Those that are not mandating vaccines are considering whether they can implement premium differentials in their health plans to penalize employees who won't get the vaccine. Wellness regulations currently permit incentives and penalties for taking legitimate health-related steps, so a COVID-19 vaccination incentive should be permissible. I would expect that the Biden administration would move to help employers by explicitly issuing guidance to permit these incentives."

Rep. Virginia Foxx, R-N.C., ranking member of the House Education and Labor Committee, said, "Biden has no business issuing a burdensome vaccine regulation that will further harm overworked and struggling business owners. This mandate will subject employers to even more financial penalties if they fail to keep up with the administration's expensive and ever-changing policies. Inflation is up, jobs are going unfilled, and our president is passing the buck to struggling and overworked business owners."

Sydney Heimbrock, a former federal HR official and now the chief industry advisor for government at experience software firm Qualtrics, said, "The president's order means employers can stop discussing whether to impose a vaccination requirement and begin the next important step of communicating with their employees about how they will act on it. Vaccine requirements are a deeply polarizing national issue, but nearly 66 percent of employees support a mandate where they work."

"Employers that have already had to navigate a sudden transition to remote work and complex safety requirements in the last 18 months now face their next hurdle: soliciting important health information from all employees," Heimbrock added. "This will require organizations to lead with empathy and mutual understanding."

See SHRM's COVID-19 Vaccination Resources (www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx) and its Coronavirus and COVID-19 Resource Hub Page (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx) for help managing mandates and vaccinations in your workplace.

Related SHRM articles:

How to Develop a COVID-19 Employee Vaccination Policy (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/how-to-develop-a-covid19-employee-vaccination-policy.aspx), *SHRM Online*, July 2021

Employers React to Workers Who Refuse Vaccination as COVID-19 Cases Rise (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/if-Workers-Refuse-a-COVID-19-Vaccination.aspx), *SHRM Online*, August 2021

When Can Employees Refuse to Get Vaccinated? (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/takeaways-from-eeoc-latest-guidance-on-covid-19-vaccines.aspx) *SHRM Online*, June 2021

Vaccine's Official Approval Mitigates Some Concerns (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/pfizer-vaccine-full-approval-impact-on-employer-covid-19-policies.aspx), *SHRM Online*, August 2021

What About Breakthrough Cases? (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/breakthrough-cases-rise.aspx) *SHRM Online*, August 2021

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