

OSHA Developing Rule Requiring Employers with 100 or More Employees to Ensure Workers Are Vaccinated or Tested Weekly

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On September 9, 2021, the Biden administration announced that the Department of Labor's Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated, or require any unvaccinated employees to produce a weekly negative COVID-19 test result before coming into work. OSHA will implement this requirement through the issuance of an Emergency Temporary Standard (ETS), which ultimately may impact more than 80 million American workers.

The White House also announced that employers subject to the new rule will be required to provide paid time off for the time it takes for employees to get vaccinated or to recover if they are "under the weather" post-vaccination.

Neither the White House nor OSHA has provided any further details on this rule at this time. Many outstanding considerations remain, including:

- An estimated date of effect for the rule.
- Whether businesses will be required to pay for employee tests.
- Whether businesses will be required to provide paid time off for employee testing or whether employee testing will be considered "compensable" working time.
- Whether the government will provide tax credits or other funding to offset the costs incurred by employers in having to comply with this rule.

- What type of tests will be acceptable for the weekly negative results.
- The logistics for employers verifying and tracking vaccine status and test results.
- Enforcement (although fines may be up to \$14,000 per violation).

Although this rule is not expected to be implemented for several weeks, employers should begin to analyze how they will implement the new rule in their business operations. Employers with workplace vaccination mandates already in place, meanwhile, should review how their current policies and procedures may be affected by this forthcoming rule. Importantly, even after this rule is implemented, employers should still consider reasonable accommodations for employees with sincerely held religious beliefs or disabilities that prevent them from taking the vaccine.

As we expect this rule might be challenged in the courts, businesses should closely monitor the law's status for further developments.

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National Law Review, Volume XI, Number 253

Source URL: <https://natlawreview.com/article/osha-developing-rule-requiring-employers-100-or-more-employees-to-ensure-workers-are>