

The Federal Government Vaccine Mandate's Impact on Colleges and Universities

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The Biden administration on Nov. 4 released a [Fact Sheet](#) announcing the details of its Occupational Safety and Health Administration (OSHA) and Center for Medicare and Medicaid Services (CMS) COVID-19 vaccination mandates.

OSHA is issuing a Vaccination and Testing Emergency Temporary Standard (ETS) that requires employers with 100 or more employees to get their employees vaccinated by Jan. 4. Unvaccinated employees will have to produce a negative test on at least a weekly basis.

CMS is requiring workers at healthcare facilities that participate in Medicare or Medicaid to be fully vaccinated by Jan. 4. The rule covers approximately 76,000 healthcare facilities and more than 17 million healthcare workers.

The Fact Sheet also announced that the Dec. 8 deadline for compliance with Executive Order 14042's vaccination mandate for federal contractors would be extended to Jan. 4. The [guidelines released](#) Sept. 24 by the Biden administration paints federal contractors with a broad brush, stating that employees who work in human resources, billing, legal review and perform work "in connection with a Federal Government contract" must be vaccinated.

Universities throughout the nation are grappling with the Biden administration's mandates because of the risk of losing hundreds of millions—billions, in some cases—of dollars in federal contracts that help pay for research and other university services. Several prominent research universities have recently announced plans to comply with the vaccine mandates for employees, including Auburn University in Alabama and the University of Alabama system, Georgia Institute of Technology and the University of Georgia, the University of Mississippi, the University of Tennessee system, the University of Virginia and the University of Wisconsin system, among others.

The matter is more complicated in Texas, where public universities are walking a tightrope between Biden's vaccination mandates and Gov. Greg Abbott's executive order prohibiting COVID-19-related mandates. Several Texas public universities—all of which are run by Gov. Abbott appointees—have recently stated that they are [still reviewing](#) Biden's mandate, which covers new federal contracts

\$250,000 or greater awarded as of Nov. 14 or existing contracts renewed as of Oct. 15.

More than 20 states' attorney generals have [filed lawsuits](#) against the Biden administration's mandate, including [Texas Attorney General Ken Paxton](#).

"The Biden administration has repeatedly expressed its disdain for Americans who choose not to get a vaccine, and it has committed repeated and abusive federal overreach to force upon Americans something they do not want," Attorney General Paxton said in an Oct. 29 press release titled "Paxton Sues Biden Administration over Illegal Vaccine Mandates."

"The federal government does not have the ability to strip individuals of their choice to get a vaccine or not," the statement continues. "If the President thinks his patience is wearing thin, he is clearly underestimating the lack of patience from Texans whose rights he is infringing."

While there are not yet any examples of litigation regarding whether federal or state orders will prevail, the Biden administration has been firm about its stance that noncompliance with the mandate will be unacceptable.

"... [T]he White House has been clear that noncompliance will not be excused, even in situations where state law contradicts the federal directive," University of Houston spokesperson Shawn Lindsey told the Texas Tribune in a statement. "It's an extremely complicated situation that requires further analysis."

Although Texas' public universities are still establishing their plans, a few large employer have already declared that they will follow the federal directive, citing the [Supremacy Clause](#) of the U.S. Constitution, which establishes that "the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions."

Companies and universities that rely on federal grants and contracts to operate should begin establishing plans to comply with Biden's order ahead of the Jan. 4 deadline. Part of their plan should include monitoring the courts for existing litigation as well as following state and federal agencies for continued guidance.

It would also be pertinent for companies and universities that employ federal contractors to assess the financial and business impact if they are unwilling to comply with Biden's mandate, as well as other potential sources of funding.

Some universities, such as [Kansas University](#), have deemed the potential financial losses too great of a risk to go against Biden's mandate.

"KU participates in millions of dollars in federal contracts that fund research, employment and educational efforts — all of which are at risk if we are not aligned with the executive order," KU Chancellor Douglas Girod wrote in a statement outlining the university's plans. "For this reason, we cannot be flexible with employees who choose not to comply with the vaccine requirement."

Hundreds of public and private colleges and universities throughout the country have required vaccines for at least some students or employees, according to [University Business](#). Almost all of the colleges and universities are accepting religious and medical exemptions.

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