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Labor & Employment Client Alert

OSHA to Issue Emergency Temporary Standard Requiring All Employers With 100+ Employees to Ensure Their Workers Are Vaccinated or Tested Weekly

By: Brian Kreucher & Dan Villaire | September 10, 2021

President Biden announced on September 9, 2021, that OSHA is developing a rule that will require all employers with 100+ employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. It is being reported that the ETS will provide for penalties of \$14,000 per violation. Administration officials have said the ETS should be published “in the coming weeks.”

The president is also directing OSHA to require businesses subject to the rule to give workers paid time off to get vaccinated and to recover from any side effects. The administration offered few immediate details on the regulation’s parameters and scope. OSHA will need to take the position that vaccinated employees are subject to substantial and unreasonable harm in the workplace because they are exposed to an individual who is not vaccinated.

The rule will face legal challenges. Until OSHA issues the standard it’s hard to say what the specific objections would be, however, but one objection could be that if OSHA were to require paid time off for vaccinations and testing that requirement would be beyond OSHA’s jurisdiction. Other unanswered questions include how employers would verify workers’ vaccination status, and its intersection with religious and medical exemptions.

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