

Coming to a (Large) Employer Near You: Mandatory Vaccination or Weekly Testing

On September 9, 2021, President Biden laid out his multi-pronged [COVID-19 Action Plan](#) to address the highly contagious Delta variant. The most critical piece of the Plan requires employers with more than 100 employees to ensure that their employees are *either* vaccinated or tested weekly. While not a true vaccine mandate, the Biden Plan provides employees an either/or choice: get vaccinated or tested weekly.

These provisions of the Plan are not in effect immediately. The Occupational Safety and Health Administration (OSHA) is tasked with developing rules to implement the new requirement. It is unclear when we can expect to see guidance.

Another key aspect of the Biden Plan is paid leave related to the vaccine. Specifically, employers with more than 100 employees will be required to provide paid time off for employees to get the vaccine and recover if they suffer side effects following vaccination. Employers with less than 500 employees are currently eligible for tax credits for this paid leave but that credit is set to expire on **September 30, 2021**, unless extended in the next few weeks.

Once OSHA promulgates the applicable rules, employers will need to prepare to comply with all applicable provisions as OSHA penalties can be substantial. Serious violations can include a penalty of up to \$13,653 per violation, while willful violations can cost an employer up to \$136,532 per violation. OSHA has the discretion to find violations and penalize employers on a per employee basis.

As we wait for additional details from OSHA regarding the rules (including requirements regarding proof of vaccination and what methods of weekly testing are acceptable), employers can take a few steps in advance:

- **Education:** Inform employees of the impending rules and what employees' options may be under the rules. You should also provide employees with reputable resources on the vaccine.
- **Survey:** Survey your workforce to determine vaccination status (which is permitted in Wisconsin and most states). This will give you an idea of what portion of your employees may be impacted by the rule. If you, as an employer,

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choose to request proof of vaccination, ensure that information is being treated confidentially.

- **Accommodations:** As always, you are required to make reasonable accommodations for employees due to a disability under the Americans with Disabilities Act, or because of a sincerely held religious belief under Title VII. You should ensure that your policies regarding accommodations are up-to-date and that the appropriate employees are prepared to assess the potential accommodation requests.

We will send out another alert once the OSHA rules become available. In the interim, if you have questions about vaccination programs or other COVID-19-related issues in the workplace, please contact [Shannon West](#) or your Reinhart attorney.

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