

What lenders need to know about Biden's vaccine mandate

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On Thursday, Sept. 9, 2021, President Joe Biden announced that the **U.S. Department of Labor** was preparing to mandate that all business with 100 or more workers require their employees to either get vaccinated against the coronavirus or face mandatory weekly testing.

This mandate is expected to affect approximately 80 million workers, and it is by far the government's biggest push toward vaccination and curbing the spread of COVID-19. The Biden administration also intends to require vaccination for federal contractors as well as 17 million health care workers in hospitals and other institutions that receive Medicare and Medicaid funding.

The Occupational Safety and Health Administration (OSHA) is drafting an emergency temporary standard to implement the requirement, and formal issuance of the rule is expected in the coming weeks. Businesses that do not comply with the order could face "substantial fines" of up to nearly \$14,000 per violation.

This is a significant development in the landscape of Covid issues facing employers. Not only could this requirement pose a significant financial burden, but it could also contribute to the labor shortage and the influx of workers leaving the workplace.

Even though the mandate will require employers to test unvaccinated employees, employers must still remain vigilant and be mindful of OSHA's "general duty" clause to mandate a safe workplace. In that respect, testing should be accompanied by other measures, such as social distances and requirements to wear face coverings.

This mandate also would not relieve an employer's obligations under the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964, which may provide exemptions to employees with disabilities or sincerely held religious beliefs. Employers also must be mindful of potential wage and hour issues, as non-exempt employees may require compensation for travel time to receive the vaccine and reimbursement for associated out-of-pocket costs.

Before implementing a mandatory vaccination policy, it is critical that employers develop a strategy to address several key areas of consideration. The strategy should include risk assessment, the development of clearly defined policies, protocols for collecting documentation, processes for reviewing exemption requests, and processes for employees who lie about their vaccination status.

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