

Private Employer Obligations Under President Biden's "Path Out of the Pandemic" Plan

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On September 9, 2021, President Biden announced a multi-pronged "Path Out of the Pandemic" plan ([President Biden's COVID-19 Plan | The White House](#)). As summarized below, the plan will, among other things, create new obligations for private employers.

- The Occupational Safety and Health Administration ("OSHA") will be issuing a new Emergency Temporary Standard ("ETS") that will require employers with 100 or more employees to ensure that all employees either (i) are vaccinated against COVID-19 or (ii) produce a negative COVID-19 test result on at least a weekly basis.
- OSHA's ETS will also require employers with 100 or more employees to provide paid time off for the time it takes employees to get vaccinated (or to recover from post-vaccination side effects).
- The Safer Federal Workforce Task Force (the "Task Force") will be issuing guidance that is expected to require certain federal contractors (and subcontractors) to ensure that their employees who "work on or in connection with" certain federal government contracts be vaccinated. Notably, this requirement is not expected to be limited to employees who physically perform work at a federal site, nor is it expected to have a weekly testing option in lieu of vaccination.
- The Centers for Medicare & Medicaid Services ("CMS") will be taking action to require vaccination for workers in most health care settings that receive Medicare or Medicaid reimbursement.

This plan clearly raises, but does not answer, a number of questions for affected employers. Our hope is that the forthcoming materials from OSHA, the Task Force, and CMS will promptly answer those questions. It is likely that key aspects of the Biden plan – including the OSHA ETS requirements – will be challenged in federal court, and it is uncertain exactly how and when that will play out. We will be closely monitoring the situation and providing additional updates when appropriate.

In the meantime, affected employers would be wise to continue encouraging their employees to get vaccinated and to begin planning for: new workplace policies related to mandatory vaccination and testing; effective vaccination and testing reporting and tracking systems; additional measures to ensure the confidentiality of vaccination and testing medical records; and the appropriate handling of accommodation requests based on underlying medical conditions and sincerely held religious beliefs. Unionized employers will also need to consider their bargaining obligations with respect to these issues.

Miller & Martin's [labor and employment attorneys](#) are ready, willing, and able to help you with these issues.