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How Will Vaccination Mandates Affect Your Company?

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On September 9, 2021, President Biden announced a six-pronged plan to combat COVID-19 and to save more lives, while keeping schools open, and ensuring the economy is protected from continued lockdowns. In the first prong of President Biden's plan, "Vaccinating the Unvaccinated," the focus is on reducing the number of unvaccinated Americans by using the government's regulatory powers and other actions to increase the number of Americans who would be covered by a mandatory vaccination requirement. To reach the greatest number of Americans, President Biden directed his mandatory vaccination requirements at the workplace.

More specifically, President Biden first directed the Department of Labor's Occupational Safety and Health Administration (OSHA) to develop a rule that will (1) require all employers with 100 or more employees to ensure their employees are fully vaccinated, or (2) require all non-vaccinated employees to produce a negative test result on a weekly basis before coming to work. President Biden also issued an Executive Order requiring that all federal employees receive a COVID-19 vaccination. Finally, on the same day, President Biden issued a second Executive Order requiring that all contractors and subcontractors performing work for the federal government receive a COVID-19 vaccination. For contractors and subcontractors, a clause will be added to all contract and contract like instruments entered on or after October 15, 2021. The responsible agencies are starting to publish the guidance and requirements. On Friday, September 24, 2021, guidance was issued relating to the vaccination requirements for federal contractors and subcontractors.

For some companies, President Biden's vaccination mandates are a welcome measure designed to encourage more employees to receive an approved vaccination and prevent businesses from experiencing COVID-19 outbreaks resulting in business slowdowns or shutdowns. For other companies, especially those in manufacturing that are continuing to experience significant employee turnover or that are still having difficulty filling open positions, President Biden's vaccination mandates are viewed as another hurdle that may negatively impact businesses. In one case, a manufacturing executive stated to this author that his company has over 200 unvaccinated manufacturing employees who have chosen for a variety of reasons not to receive a COVID-19 vaccination. The executive fears that President Biden's vaccination mandate may cause some of his unvaccinated employees to quit, thereby increasing the number of open jobs that the company is already having difficulty filling. In another case, an unvaccinated employee simply quit via a text message to avoid complying with her employer's vaccine mandate.

In response to President Biden's vaccination mandate for companies with a 100 or more employees, twenty-four state attorneys general have signed a letter to President Biden urging him to reconsider his "disastrous and counterproductive plan" or face legal action. President Biden's plan will certainly face legal challenges that may delay his vaccination mandates. That said, because of the high number of unvaccinated employees and the new focus on the need for a booster shot, companies should plan for COVID-19 to be part of their business challenges for the remainder of 2021 and well into 2022. The only thing certain about COVID-19 is the uncertainty about COVID-19.