

## COVID-19 VACCINE MANDATE FOR LARGE EMPLOYERS

On September 9, 2021, President Biden announced that the Occupational Safety Administration ("OSHA") would soon issue a new rule, known as an "Emergency Temporary Standard," requiring large employers to ensure that their employees are vaccinated against COVID-19 or undergo weekly COVID-19 testing.

While the White House provided few details about the proposed rule, here is what we know:

- The rule will apply to all private-sector employers with 100 or more employees.
- These employers must require that their employees either show proof of vaccination or submit to weekly testing for COVID-19.
  - Note that because employees can choose to be tested rather than vaccinated, the rule may not require exemptions based on religion or disability.
- These employers will be required to give their employees paid time off to receive the vaccination(s) and to recover from any side effects.
- Employers who fail to comply with the rule will be subject to financial penalties.
  - It seems that penalties can be up to \$14,000 per violation, but it is unclear what that means: Is that \$14,000 per unvaccinated/untested employee per week?

There are many open questions about the mandate:

- Will it apply to employees who are working remotely or only to those actually in the workplace?
- What penalties can employers impose on employees who fail to be vaccinated or tested? Can these employees be fired? Suspended without pay?
- Will employees be given paid time off for their weekly tests? Must employers pay for the testing, or can they require employees to bear those costs?

It is also unclear how soon these requirements will take effect. It took approximately six months for OSHA to release its Emergency Temporary Standard governing health-care workers. Moreover, it seems likely that the rule will be challenged. In the past, many judicial challenges to Emergency Temporary Standards have been successful.

Whether some states' OSHA programs will follow suit for smaller employers remains to be seen.

If the rule does take effect, employers will have to implement policies and procedures for compliance.

Interestingly, businesses and chambers of commerce generally support the mandate. Some believe that it is a welcome relief to have the decision regarding vaccination or testing taken out of their hands.

Hoguet Newman Regal & Kenney, LLP will keep you updated on the specifics of the new rule once OSHA has released the Emergency Temporary Standard.

**For questions relating to this  
client alert, please contact:**

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