

WHAT CALIFORNIA EMPLOYERS NEED TO KNOW ABOUT THE FEDERAL COVID-19 VACCINE/TESTING MANDATE

The Biden Administration has announced a mandate for private employers with more than 100 employees to require employees to be vaccinated or tested for COVID-19 on a weekly basis. Here's a summary of what California employers need to know:

1. The U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") Will Develop Rules Implementing the Mandate

The Biden Administration has charged OSHA with developing rules – in the form of an Emergency Temporary Standard ("ETS") – to implement the vaccine/testing mandate. The administration has also vested OSHA with authority to issue fines against employers that don't comply. Fines may be up to \$14,000 per violation. Until the ETS is issued, the mandate is not yet in effect.

2. What the ETS Will Likely Say

The ETS will require private employers with 100 or more employees to ensure their employees are vaccinated or require a negative COVID-19 test from unvaccinated employees at least once a week. The ETS will also require employers to pay for the time it takes employees to receive and/or recover from the vaccine. Employers will be required to provide reasonable accommodations for employees with medical issues that prevent them from being vaccinated or based upon a sincerely held religious belief.

3. Other Vaccine Mandates

The California legislature and various California municipalities are considering mandates requiring employee COVID-19 vaccination and testing. For now, however, California has vaccine mandates only for teachers and school staff, and for certain health care workers who must be vaccinated by September 30, 2021. As for testing, Cal/OSHA currently requires weekly testing of unvaccinated employees whenever a workplace experiences a COVID-19 outbreak, defined as three or more cases within a 14-day period.

4. What California Employers Should Do Now

Employers need not wait for OSHA's ETS to begin formulating or implementing mandatory COVID-19 vaccine/testing policies. California and federal law already allow employers to require employees to be vaccinated. For example, Under California's Fair Employment and Housing Act, employers may require employees to receive an FDA-approved COVID-10 vaccine as long as the employer provides

reasonable accommodations related to disability or sincerely held religious beliefs or practices. And the California Department of Industrial Relations has published helpful FAQs for Cal/OSHA's COVID-19 Workplace Standards that addresses vaccine mandates and testing protocols. (See, <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>) Adopting such a policy will not only ensure compliance with the upcoming OSHA ETS, it will allow employers to demonstrate compliance with their common law duty to provide employees with a health and safe workplace.