

President Biden's Proposed COVID-19 Vaccination or Weekly Testing Mandate for Employers Does Not Generally Apply to Schools, Except for Head Start Programs

BRIAN P. GOODMAN | 09.10.21

On September 9, 2021, President Biden announced that the Department of Labor's Occupational Safety and Health Administration (OSHA) would be issuing an emergency rule that requires all private sector employers with 100 or more employees to require their employees to get vaccinated for COVID-19 or submit to weekly COVID-19 testing. If a covered employer fails to comply with emergency rules, it could result in enforcement action and fines from OSHA. Additionally, President Biden signed an emergency order that will add a language to federal contracts contractually requiring employers that enter into federal contracts to have their employees get vaccinated or submit to weekly COVID-19 testing.

How Schools are Affected by Biden's Plans

OSHA does not have jurisdiction over public sector employers, including schools. Some public schools and CESAs will be affected by President Biden's plans to require teachers and staff at Head Start early education programs to get vaccinated or face weekly testing. This requirement won't be established through OSHA, but rather through emergency regulations from another federal agency, likely the Administration for Children and Families, Department of Health and Human Services which has jurisdiction over Head Start Programs.

What Biden's Plans Mean Going Forward

At this time, there are many unknowns, such as the specific timelines for implementation of the rule and timelines for employers to come into compliance with the rule. Additionally, organizations have already announced plans to sue the Biden administration to prevent these rules from taking effect. For now, employers should monitor this issue because the emergency rule could take effect quickly once promulgated. However, litigation could complicate the timeline for the rules or stop them from taking effect altogether.

The Boardman Clark School Law Practice Group will continue to monitor developments related to the vaccination and testing mandate in order to advise our clients as soon as more details are announced.

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