

Biden Administration Orders Long Term Care Facilities to Require COVID-19 Vaccinations To Receive Federal Funds; OSHA Issues Updated COVID-19 Recommendations For All Workplaces

August 18, 2021 – Dorsey Health Law
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As we have previously written, the landscape for employers in the time of COVID-19, particularly health care employers and long term care facilities, is ever-changing and quickly moving. In the last year, health care employers have had to navigate state laws, Centers for Disease Control and Prevention (“CDC”) and Centers for Medicare & Medicaid Services (“CMS”) guidance, EEOC guidelines, as well as compliance with a complex Emergency Temporary Standard (“ETS”) issued by the Occupational Safety and Health Administration (“OSHA”).

In the midst of all that, health care providers have grappled with whether to implement policies requiring COVID-19 vaccinations for employees absent a religious or medical exemption. In Iowa, Unity Point Health, Sanford Health, MercyOne, Genesis Health System, and Trinity Health will require employees to be vaccinated for COVID-19 in the next few weeks and months. This includes long term care facilities administered by those entities.

In a somewhat unexpected twist, the Biden Administration announced today that CMS and the CDC are “developing an emergency regulation requiring staff vaccinations within the nation’s more than 15,000 Medicare and Medicaid-participating nursing homes.” According to the announcement, a rule is expected in the coming weeks. The Administration’s order will surely generate multiple lawsuits challenging the legality of the mandate. We estimate that those lawsuits will likely not be successful, in part based how quickly similar lawsuits against hospital employers have been dismissed by courts across the country. For example, this summer a court swiftly dismissed a lawsuit filed by employees of Houston Methodist hospital challenging the hospital’s COVID-19 vaccine mandate.

Last week, in addition to the OSHA ETS for healthcare employers published on June 21, 2021, OSHA issued new recommendations for all employers with a specific focus on protecting unvaccinated workers. To combat the continued spread of COVID-19, OSHA

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recommends that employers do the following:

1. Assist employees in getting vaccinated for COVID-19, including paid time off to get and recover from vaccines. Some employers can receive tax benefits for voluntarily paying employees under these and other circumstances.
2. Remove employees with known or suspected COVID-19 exposure from the workplace for either 14 days or until the employee receives a negative test result.
3. Make sure that unvaccinated and high risk employees physically distance from others, limit the number of unvaccinated and high risk employees at one place at any given time, allowing remote working for unvaccinated and high risk employees, and installing transparent barriers when physical distancing is not feasible.
4. Require employees to wear masks indoors (unless other PPE is otherwise required for the job), and provide face coverings to employees who do not have their own.
5. Educate employees on workplace COVID-19 policies and procedures, including providing materials in multiple languages as needed.
6. Suggest that unvaccinated customers, vendors, visitors, or other guests wear a mask.
7. Maintain properly working ventilation systems.
8. Follow CDC guidelines regarding cleaning and disinfection.
9. Record and report workplace infections and deaths related to COVID-19.
10. Implement policies and procedures to ensure that employees who raise concerns about COVID-19 in the workplace are not subject to retaliation.
11. Follow any other applicable mandatory OSHA standards.



In sum, OSHA recommends that, for the most part, all employers follow the requirements set forth for healthcare providers in the ETS.

We want to help all employers keep their employees safe and protected from COVID-19, and we want to help you do your part to prevent the spread of the virus. If you have any questions about what you are required by law to do in your workplace, or what is not required but recommended, please contact a qualified employment and healthcare attorney.