

Legislative Alert

Over 100 Employees?

COVID-19 Vaccine Requirements May Be Coming

On September 9, 2021, President Biden announced his administration's implementation of its new Covid-19 plan entitled "Path Out the Pandemic," aimed at combating the increased spread of COVID-19. The President's plan contains a six-pronged national strategy that will utilize the regulatory powers of his office to mandate vaccinations (in some cases with an alternative opt-out requirement) for employees working for the federal government, federal contractors, healthcare entities, and large private employers. The most notable requirement for many industries is the directive for "large" private employers, defined as employers with 100 or more employees. This new rule will require all large employers to mandate vaccinations for all employees or require weekly COVID-19 testing. Specifically, the Occupational Safety and Health Administration ("OSHA") will develop an Emergency Temporary Standard ("ETS") for this rule requiring all large employers to:

- **Ensure that 100% of their workforce is vaccinated against the COVID-19 virus**, with any of the emergency or fully FDA-approved vaccines; **OR**
- Receive a **weekly negative COVID-19 test result** from all unvaccinated employees prior to coming to work.

In addition to this vaccination and/or weekly testing requirement, employers **must also provide paid-time off benefits** for the **time needed to get tested** and **post-vaccination recovery**, if necessary. OSHA should release its ETS in the coming weeks, outlining the specifics of this new ruling and how to comply with its requirements, including information on payment responsibility for vaccinations and testing and the timeline for implementation.

There are many compliance concerns raised by this plan under ERISA, HIPAA, certain wellness program rules, and other regulations that will need to be contemplated by employers. Upon OSHA's issuance of the ETS, Intrepid will provide further guidance and information on compliance with the requirements. We also recommend you reach out to your legal counsel for assistance. If you are a large employer and would like to discuss the above requirement in more detail or if you are a healthcare entity, federal contractor, or federal government employer and would like information on how the other pieces of this plan apply to you, please visit <https://www.whitehouse.gov/covidplan/>