

President Biden’s Six Prong COVID-19 Action Plan: What employers need to know about the Path out of the Pandemic



Miriam L. Rosen, Julia Ross | Friday, September 10, 2021

Facing the raging delta variant and waning vaccination levels, on Thursday, September 9, 2021, President Joe Biden announced a wide-ranging **COVID-19 Action Plan** (Plan) termed the “Path out of the Pandemic,” designed to fight the continued spread of COVID-19. In a White House speech, the president implored the unvaccinated to get vaccinated and authorized federal agencies to take action to require public and private employers to make it happen.

The Six Prong COVID-19 Action Plan

The six key elements of the president’s Plan include vaccine requirements, booster shots, keeping schools open, increasing testing and requiring masks, economic recovery, and improving patient care. For employers, the centerpiece of the Plan includes vaccine and testing requirements for employees of private employers of 100+ workers.



PRONG 1: VACCINATING THE UNVACCINATED

- **Employers with 100+ employees must ensure workers are vaccinated or tested weekly.** In an unexpected move, the president’s Plan calls for a

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sweeping rule that all employers with 100 or more employees require their workforces to be fully vaccinated or require unvaccinated employees to produce a negative test result at least once a week prior to coming to work. The Plan states that OSHA will issue an Emergency Temporary Standard (ETS) to implement the requirement. The ETS will also require employers with more than 100 employees to provide paid time off for the time it takes for employees to get vaccinated or to recover from symptoms resulting from the vaccination.

The requirement will go into effect in the coming weeks after OSHA issues the Emergency Temporary Standard. This gives employers some time to prepare for this requirement by communicating with their employees and putting processes in place. Employers should expect the ETS to answer many of their practical questions about the new mandate, including who pays for testing and how medical and religious exemptions factor in. One fact that we do know now is that violations of the ETS will be punishable by a fine of up to \$14,000.

Observers had expected the Plan to include additional vaccine and testing requirements for federal government contractors, but the broad vaccine and testing requirements for private employers caught many off-guard. As a result, employers should anticipate that challenges to OSHA's ETS may delay implementation of the requirements. Immediately following President Biden's announcement, a host of interested parties from union leaders to Republican governors criticized the president's efforts to impose such broad requirements on private employers.

- **Expanded vaccine requirements for employees of federal contractors.** In an expected announcement, the Plan expands the vaccine requirement for federal workers and employees of federal government contractors. Consistent with that, the president signed an Executive Order requiring vaccines for all federal employees. The White House indicated that employees

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of the federal government will have 75 days to be vaccinated.

In a second Executive Order aimed at federal government contractors and their employees, the president directed federal agencies to include a specific clause in their federal contracts and “contract-like instruments,” requiring contractors to comply with COVID-19 protocols from the Safer Federal Workforce Task Force. The new requirements apply to all federal contracts subject to FAR.

The task force has two weeks to develop specific safety guidance for federal contractors, and the OMB must approve it and publish new vaccine requirements in the Federal Register. Similar to the general employer mandate, this gives federal contractors some time to communicate with their workforces and plan for the new requirement.

- **Require COVID-19 vaccinations for health care workers at Medicare and Medicaid participating hospitals and other health care settings.** The Centers for Medicare & Medicaid Services will require vaccinations for employees in healthcare settings that receive Medicare or Medicaid reimbursement. This requirement will apply to, but is not limited to, hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. This requirement will build upon the vaccination requirement for nursing home facilities and will apply to nursing home staff, staff in hospitals, clinical staff, volunteers, individuals providing services under arrangements, and even staff who are not involved in direct patient, resident, or client care.
- **Calls on large entertainment venues to require vaccination proof or testing for entry:** The Plan encourages entertainment venues (sports arenas, large concert halls, and other venues) to require patrons to be vaccinated and/or show a negative COVID-19 test for entry.



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PRONG 2: FURTHER PROTECTION FOR THE VACCINATED

- **Providing easy access to booster shots for all eligible Americans.** The Biden administration anticipates that booster shots will be available as early as the week of September 20, 2021, if it receives appropriate regulatory approvals. Booster shots, much like the original vaccination, will be free and widely available.
- **Ensuring Americans know where to get a booster.** As part of the booster shot roll-out, when the booster shots are available, individuals will be able to find a vaccination site at [Vaccines.gov](https://www.vaccines.gov) as well as by calling 1-800-232-0233.



PRONG 3: KEEPING SCHOOLS OPEN

The Plan includes a number of measures focused on keeping schools open and supporting school safety measures. Elements of this prong include:

- **Require vaccines for staff at certain federal government supported education programs.** The Plan will require teachers and staff at Head Start and Early Head Start programs, the Department of Defense School, and the Bureau of Indian Education-operated schools get vaccinated.
- **Calls on all states to adopt vaccine requirements for all school employees.** The Plan calls on governors to require vaccinations for all teachers and school staff. Nine states (California, Connecticut, Hawaii, Illinois, New Jersey, New Mexico, New York, Oregon, and Washington), as well as Washington, D.C. and Puerto Rico, already have vaccine requirements for teachers and staff.
- **Test students and school staff regularly.** The Plan encourages all schools to set up regular testing in their schools for students, teachers, and staff pursuant to CDC guidelines. Currently, the CDC recommends testing for unvaccinated students when community transmission levels are moderate, substantial, or high and for all unvaccinated teachers and staff at all community transmission levels.



PRONG 4: INCREASING TESTING AND REQUIRING MASKING

- **Expand easy-to-use testing production.** The Plan ensures industrial manufacturing of COVID-19 tests to support vulnerable populations. The Plan also provides for tests for use by communities, adequate stockpiles, and the needed sustained production to be able to increase additional manufacturing in the future as necessary.
- **Making at-home tests more affordable.** Under the Plan, Walmart, Amazon, and Kroger will sell at-home tests at-cost for the next three months, starting at the end of this week. Medicaid will also cover at-home tests for free and states will be prohibited from establishing arbitrary barriers for people seeking care.
- **Continue masking for interstate travel and double fines.** TSA has already extended its orders requiring masks for air and ground travel. The Plan doubles the fines for those who do not comply with TSA's mask requirements.
- **Continue masking on federal property.** The Plan reinforces President Biden's Executive Order requiring masking and specific physical distancing requirements in federal buildings, on federal lands, on military bases, and other overseas locations, consistent with CDC guidance.



PRONG 5: PROTECTING OUR ECONOMIC RECOVERY

- **New support for small businesses impacted by COVID-19.** The Plan increases the maximum funding for small businesses from \$500,000 to \$2 million. Small businesses can use this funding to hire and retain employees, purchase inventory and equipment, and pay off higher-interest debt.
- **Streamlining paycheck protection program (PPP) loan forgiveness for small loans.** The Plan also makes it easier for PPP borrowers to apply for funding. The SBA will now send a pre-completed application form to the borrower to review and send back to SBA, which

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will then work with the lender to complete the forgiveness process.



PRONG 6: IMPROVING CARE FOR THOSE WITH COVID-19

- **Increase support for COVID-burdened hospitals.** The Plan calls for the Department of Defense to double the number of teams of clinicians deployed to support hospitals struggling with surges in COVID-19 cases.
- **Increase monoclonal antibody treatment.** The administration will increase the average weekly pace of shipments of free monoclonal antibody treatment to states by 50% in September. Monoclonal antibody treatments reduce the risk of hospitalization for unvaccinated people.

What should employers do now?

The president's Plan essentially takes the decision about mandating vaccines out of employers' hands. Employers may face some resistance from unvaccinated employees, but the sweeping nature of the requirements provides employers with some level of comfort that employees will have less latitude to seek a new employer who is not requiring vaccines.

Understanding that vaccine requirements and weekly testing are now imminent, employers must begin making plans. Employers should develop a clear communication plan to make implementing the requirements easy for employees to understand and follow. Employers will want to consider and communicate about the following:

- The specifics of the federal vaccine requirement and weekly testing requirement
- Address vaccination timing requirements
- Develop a process for handling exemption/accommodations for medical or religious reasons
- Establish a process for providing proof of vaccine status
- Indicate consequences for failing to comply with the mandate or alternate requirements

The attorneys on the [McDonald Hopkins Labor and Employment Team](#) are available to help employers work through legal and practical vaccine policy and implementation issues, to develop forms and processes, and to assist with assessing exemption requests. Please reach out to your McDonald Hopkins attorney for support in complying with these new and expansive requirements.



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