

Developments Regarding Employee Vaccination Requirements

Related Professionals

Brittany N. Clark
803.540.2171
BClark@nexsenpruet.com

David E. Dubberly
803.253.8281
ddubberly@nexsenpruet.com

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Recently we provided an overview of expected vaccine mandates for: (1) employers with 100 or more employees, (2) federal contractors, and (3) healthcare employers.

On September 24, 2021 a task force issued guidance on the mandate for federal contractors and subcontractors (“contractors”). Pursuant to that guidance, for contractor employers with a “covered contract” that was awarded before October 15, 2021 and where performance is still ongoing, the vaccine mandate will not be incorporated into the contract until an option is exercised or an extension is made. Covered contracts awarded between October 15 and November 14, 2021 may include the vaccine mandate. Covered contracts awarded on or after November 14, 2021 will include the requirement that employers mandate the COVID-19 vaccine for employees—and employees will need to be “fully vaccinated” by December 8, 2021. To be “fully vaccinated” by December 8, 2021 will require employees to have received their second dose of the Pfizer or Moderna vaccines or their single dose of the Johnson & Johnson vaccine by November 24, 2021, unless they qualify for an exemption. These federal contractor employees do not have the option of weekly testing as an alternative to receiving the vaccine.

We are still awaiting further guidance regarding the vaccine mandate for employers with 100 or more employees, which will be issued by OSHA as an emergency temporary standard. On September 29, 2021, the White House press secretary stated that it could be “weeks”—and she implied it may be several weeks—before OSHA makes the text of that standard public. Until that happens, we will not know if part-time employees or the employees of affiliated entities or subcontractors will count toward the 100-worker threshold. Other questions will also remain unanswered until OSHA issues this standard, including who pays for weekly testing (employer or employee?) where an employer chooses to permit this as an alternative to vaccination and whether an employer must provide paid time off for testing. When OSHA issues the emergency standard, our Employment and Labor

Law group will present a webinar explaining what it requires.

We will provide updates on the vaccination requirements as events warrant. In the meantime, please contact any member of the Nexsen Pruet Employment & Labor Law group if you have additional questions.