

# CMS Issues New Vaccine Mandate Timing Deadlines for Healthcare Employers in the 24 States Previously Covered by Injunctions, including South Carolina

## Related Professionals

Kamri N. Barber  
803.540.2148  
kbarber@nexsenpruet.com

Nikole Setzler Mergo  
803.540.2042  
nmergo@nexsenpruet.com

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Employment & Labor Law

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Health Care

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On January 14, 2022, following our prior alert found here, CMS issued guidance containing new compliance deadlines for the vaccine mandate for those healthcare employers in the 24 states previously covered by injunctions. The January 14 guidance can be found here.

### Q: What States Are Subject to the January 14 Guidance?

A: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming. CMS noted that this guidance does not apply to Texas at this time.

Healthcare employers subject to the final rule in states not explicitly listed above are expected to comply with the guidance set forth in the December 28, 2021 memorandum linked here.

### Q: What is the first compliance deadline for the above-listed states?

A: Within 30 days, or by **February 13, 2022**, a qualified healthcare employer must: (1) establish policies and procedures to ensure all staff is vaccinated; and (2) ensure 100% of staff has received at least one dose of the vaccine (or has a pending or granted exemption). Those healthcare employers with any staff members who have not received at least the first dose within 30 days and do not have a pending or granted exemption, will be considered non-compliant. Employers who fail to satisfy the requirements within 30 days will receive a notice of failure to comply. Employers who have implemented a vaccination plan and have at least 80% of staff who have received the first dosage by February 13, 2022, and who have a plan to achieve 100% compliance, will not be subject to additional penalties. However, employers who do not satisfy these requirements may face

penalties depending on the severity of the non-compliance.

**Q: What is the second compliance deadline for the above-listed states?**

**A:** Within 60 days, or by **March 15, 2022**, all qualifying employers must: (1) have established policies and procedures outlining vaccination requirements and; (2) ensure all staff members have received the second dose of any two-dose COVID-19 vaccine or the first dose of any single dose COVID-19 vaccine (or have been granted an exemption). Again, facilities will receive notice of non-compliance below 100%. Healthcare employers that have at least 90% of staff fully vaccinated and a plan for 100% compliance within 30 days would not be subject to additional enforcement action. Employers who fail to satisfy these requirements may face additional penalties depending on the severity of the non-compliance.

**Q: What enforcement measures will be taken to ensure full compliance?**

**A:** CMS reiterated its enforcement mechanisms for qualifying employers that fail to comply with the vaccine mandate. Employers in the nursing home, home health agency, and hospice settings may face civil monetary penalties, denial of payments, or termination of participation from Medicare or Medicaid programs and hospitals and other acute care facilities may face program termination. *Importantly*, however, CMS stressed that its “primary goal is to bring health care facilities into compliance” and “termination would generally occur only after providing a facility with an opportunity to make corrections and come into compliance.”

**Q: What is Considered Full Compliance?**

**A:** The CMS mandate requires 100% of staff in qualifying facilities to be fully vaccinated. A vaccination rate below 100% is considered non-compliance. Employers failing to comply with the mandate will be subject to any of the above-mentioned penalties unless an exemption, as required by federal law, applies or the CDC has recommended a temporary delay in receiving a dose of the vaccine. CMS will evaluate compliance status through standard and complaint-based surveys.

*Nexsen Pruet is prepared to assist healthcare employers in navigating the ever-changing COVID-19 vaccine developments, including this mandate, policies, and analysis of requested exemptions or EEOC challenges resulting therefrom. Please let us know if there is anything we can do to help you move forward in a practical and compliant way.*