



Memo

To: MCAA Members and MCAA Local Affiliates

From: Timothy J. Brink

Date: September 16, 2021

Re: MCAA Comprehensive Coverage of Construction Industry Private and Public Sector COVID Vaccination and Testing Mandates Required by Executive Order EO 14042

Attached is the initial installment in what will be MCAA's regular and frequent updates on the significant issues relating to public and private owner mandates, issued by the federal government, requiring MCAA member firms to require their workers to either accept the COVID-19 vaccine or submit to periodic COVID testing.

MCAA's Government Affairs and Safety professionals, in close concert with their respective member committees, will track and report specific development on these issues as they arise. MCAA is planning close collaboration with our sister associations in the Construction Industry Safety Coalition to monitor these issues and provide MCAA member input effectively at each opportunity in the rulemaking, legal challenge, or administrative stages of developments.

MCAA will report and digest specific factual developments and won't get ahead of developments with speculation about what rulemaking developments might come about. Our scope of coverage will include OSHA and Federal procurement rulemaking and administration, employee benefits coverage developments, collective bargaining issues and developments, and associated contractual and market issues pertaining to private project owner vaccine mandates as well.

This first installment, provided by our consultants at Alston & Bird, relates the basic facts and outline of the Biden Administration Executive actions last week.

Additional information includes the following articles:

[Digest of the Biden Administration's Executive Order 14402 and Copy of the EO](#)

[MCAA's Safety & Health Initiative Highlights OSHA & CMS Response to the Vaccination Mandates](#)

ALSTON & BIRD

TO: John McNerney, General Counsel, Mechanical Contractors Association of America

FROM: Emily Shaw, Alston & Bird LLP

DATE: September 15, 2021

RE: Biden Vaccine Initiatives Announced September 9, 2021

On Thursday, September 9, 2021, President Biden delivered a [speech](#) detailing a national strategy to combat the COVID-19 pandemic. During the speech, the President announced two executive orders and certain administrative actions that will increase mandates for vaccination in both government and private workplaces. Altogether, the vaccine requirements announced on September 9 are projected to affect about 100 million Americans, or two-thirds of American workers. These measures are summarized below.

1. Vaccination Requirements for Employers with 100+ Employees

On September 9, the Biden Administration published [Path out of the Pandemic: President Biden's COVID-19 Action Plan](#) (COVID-19 Action Plan), which outlines the Administration's six-pronged strategy to address the ongoing COVID-19 pandemic. The COVID-19 Action Plan announces that the Department of Labor's Occupational Safety and Health Administration (OSHA) is developing an Emergency Temporary Standard (ETS) to require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. The COVID-19 Action Plan notes that this requirement will impact over 80 million workers in the private sector.

Few details are available regarding the timing of the ETS. Note, however, that an ETS may be promulgated without complying with the usual notice and comment process and is immediately effective upon publication in the Federal Register. OSHA is required to promulgate a permanent standard within six months of issuing an ETS, although the standard rulemaking process often takes [far longer](#) in practice.

2. Vaccination Requirements for Federal Employees and Federal Contractors

On September 9, President Biden issued two executive orders that set forth vaccination requirements for federal executive branch employees and contractors. The first, [Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees](#), directs agencies to implement a program to require COVID-19 vaccination for all Federal employees, with exceptions only as required by law. The Safer Federal Workforce Task Force issued [guidance](#) on September 13 detailing agency implementation of this

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requirement. The guidance directs agencies to ensure that their employees are fully vaccinated by **November 22, 2021**. Federal employees are permitted to obtain the COVID-19 vaccine during duty hours, and receive overtime if the employee is unable to obtain the vaccine during basic tour of duty hours. The guidance also notes that Federal employees will receive paid time off to address any side effects and to accompany a family member being vaccinated.

The second Executive Order on [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) directs agencies to ensure that contracts include a clause, applicable to the contractor and any subcontractors, requiring compliance with all applicable guidance issued by the Safer Federal Workforce Task Force. The Task Force will issue guidance on workplace safety protocols for contractors and subcontractors by September 24.

These executive orders expand on the Biden Administration's July 29 [announcement](#), which [required](#) attestation of vaccination status and weekly or twice-weekly testing for Federal employees and onsite contractors who do not attest to having received the COVID-19 vaccine. The COVID-19 Action Plan also notes that the Department of Defense, the Department of Veterans Affairs, the Indian Health Service, and the National Institute of Health will complete implementation of their previously announced vaccination requirements that cover 2.5 million people.

3. Vaccination Requirements for Health Care Facilities

Finally, the Administration, in its September 9 [COVID-19 Action Plan](#), announced that the Centers for Medicare & Medicaid Services (CMS) will require COVID-19 vaccinations for workers in most health care settings. This announcement expands on the agency's previous vaccination requirement applicable to nursing facilities, [announced](#) August 18. CMS's [press release](#) on September 9 stated that the requirement will be implemented through an Interim Final Rule with Comment Period in October. The scope of affected health care facilities will be determined through such rulemaking, but is expected to include hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies, among others. The COVID-19 Action Plan notes that the vaccination requirements will apply to approximately 50,000 providers, and will include both clinical staff and staff who are not involved in direct patient care. President Biden noted in his speech that the expansion of vaccination requirements for health care facilities will cover 17 million healthcare workers.

