Federal Vaccine Mandate for Large Employers

November 4, 2021

Porzio Client Alert

In a White House Fact Sheet released today, the Biden Administration has announced the details of two major vaccination policies.

First, The Department of Labor's Occupational Safety and Health Administration (OSHA) is issuing a COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) to require employers with 100 or more employees to ensure each of their workers is fully vaccinated or tests for COVID-19 on at least a weekly basis. To meet the 100 employees threshold, part-time workers will be counted but independent contractors will not.

Under the OSHA rule, employers will be required to provide paid time off for employees to receive the vaccination or recover from any negative side effects. However, employers will not be required to cover the costs of COVID-19 tests for employees who choose the testing option. If employees test positive for COVID-19 or cannot produce a negative test, the employer must remove them from the workplace.

The testing requirement for unvaccinated workers will begin after January 4, 2022. However, as of December 5, 2021, employers must ensure all unvaccinated employees are masked while in the workplace and comply with requirement to give paid time off for employees to obtain the vaccination.

Second, the Centers for Medicare & Medicaid Services (CMS) at the Department of Health and Human Services will require that health care workers at facilities participating in Medicare and Medicaid are fully vaccinated by January 4, 2022. The rule applies to employees regardless of whether their positions are clinical or non-clinical and includes employees, students, trainees, and volunteers who work at a covered facility that receives federal funding from Medicare or Medicaid. The CMS rule does not include the weekly testing option that the OSHA rule provides.

Both OSHA and CMS emphasize that their new rules preempt any contradictory state or local laws, including laws that ban or limit an employer's authority to require vaccination, masks, or testing requirements.

The White House Fact Sheet can be found at https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/fact-sheet-biden-administration-announces-details-of-two-major-vaccination-policies/.