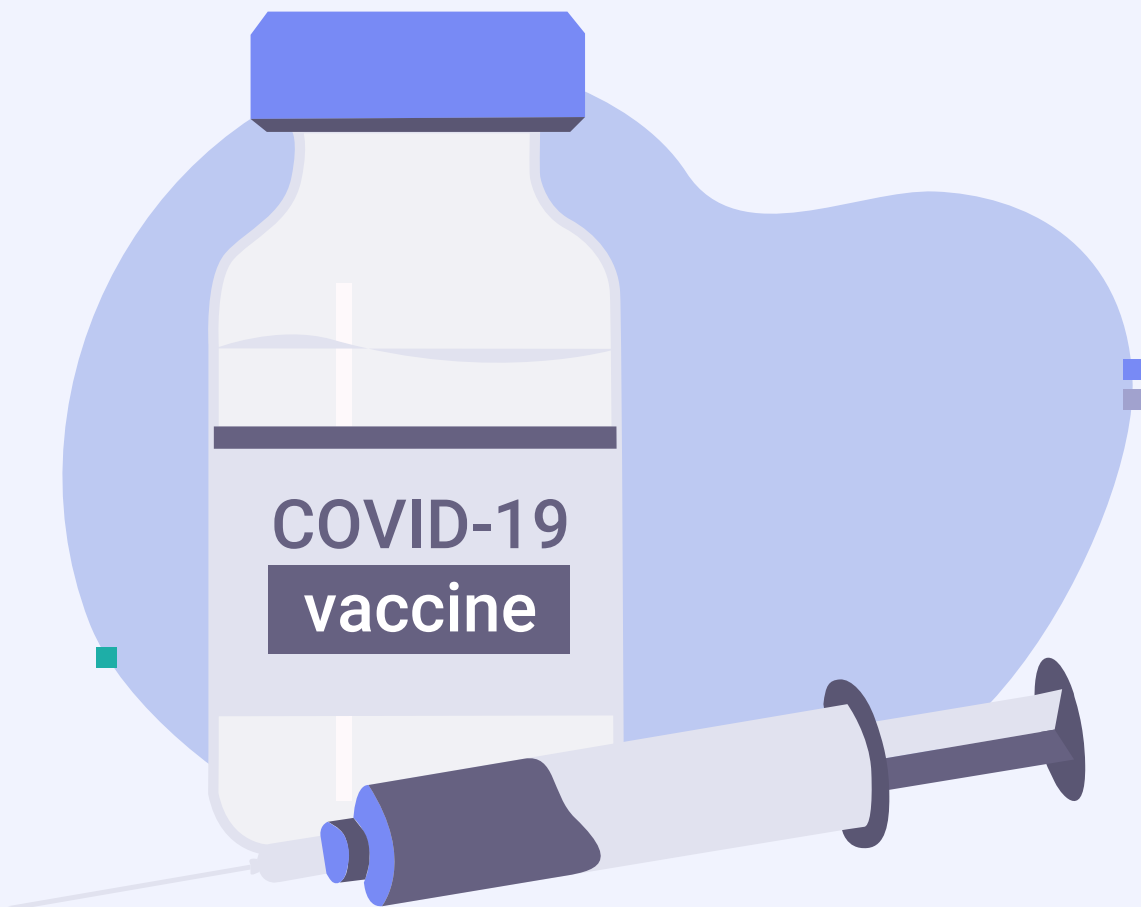


New Federal Vaccine Rules



On September 9, 2021, President Biden announced a series of major changes to US regulations and policy regarding COVID-19 vaccinations. The most important takeaways from his address were that:

- 1 All federal employees working in executive agencies are, by executive order, required to be vaccinated;
- 2 All federal contractors are required to be vaccinated;
- 3 All healthcare workers who work for entities receiving payments from Medicare or Medicaid are, by executive order, required to be vaccinated; and
- 4 Through an upcoming Occupational Health and Safety Administration (OSHA) Emergency Temporary Standard (ETS), all employers with 100 or more employees must require their employees to be vaccinated or, for those who do not get vaccinated, undergo weekly COVID-19 testing;

These announcements have engendered a host of new questions regarding what employers must and should do in order to comply with federal and state requirements while keeping their worksites running. Approximately 80 million American workers are employed at companies with 100+ employees and approximately 20 million workers are governed by the new executive orders on healthcare and federal employees/contractors. That means that the majority of the American workforce (approximately $\frac{2}{3}$ of it) will be subject to one of these rules.

The majority of this paper is devoted to addressing the “vaccinate or test” rule for companies with 100 or more employees. The first section, however, provides an overview of the executive orders.

I. Executive Orders

A. Federal Workers (Executive Order 14043)

By executive order, all executive agencies will implement a mandatory vaccination program. All federal workers will be required to be vaccinated by November 22, 2021. This mandatory program does not offer an alternative whereby employees who do not wish to be vaccinated can opt to be tested on a weekly basis. The order does allow for “exceptions required by law,” which means that those employees who have a medical or religious reason for an exemption will be able to request one. According to federal nondiscrimination law, the government will be required to allow reasonable accommodations in those scenarios.

The Safer Federal Workforce Task Force issued [guidance](#) on 16 September that, in a surprise move, stated that remote employees are not exempt from the requirement because they may be required to interact with the public or may be recalled to work on site. Additionally, even if a federal employee has previously attested to their vaccination status, they will be required to submit proof of vaccination that includes specific information, such as the dates of the doses received and the type of vaccine administered. Guidance was also issued requiring visitors to federal agencies to attest to their vaccination status (except those seeking a public benefit or service, who do not need to attest to or otherwise document vaccination status). The Task Force has issued significant additional guidance that is accessible through a posted [FAQ](#) sheet.

B. Federal Contractors (Executive Order 14042)

Under the executive order requiring federal contractors to be vaccinated, a new clause will be added to federal contracts specifying that the contractor will comply with all guidance from the Safer Federal Work Force Task Force. The Task Force issued some guidance in its [FAQs](#). Agencies will take steps to make sure their contracts are prepared to comply by 8 October and that any contracts entered after 15 October comply. According to the FAQs from the Task Force, agencies are strongly encouraged to incorporate vaccination requirements into all contracts, even when those that are not technically covered by the Executive Order. “This might include, for example, incorporating vaccination requirements into contracts in advance of when they are otherwise required by the Executive Order or incorporating requirements into contracts that are not covered by the Executive Order, such as contracts under the Simplified Acquisition Threshold.”

Any contractors who do not attest to their vaccination status will be treated as unvaccinated. Onsite contractors who are not fully vaccinated or who decline to provide information about their status will be required to provide proof of a negative COVID-19 test from no later than the previous 3 days before they may enter a federal building. The Task Force has also provided a [Certification of Vaccination](#) form for use by contractors.

There are indications that a challenge to this executive order is likely. Such a challenge will most likely be based on presidential authority to regulate the terms and conditions of federal contractors under the Procurement Act.

C. Healthcare Workers ¹

According to President Biden’s announcement, all healthcare workers who work for entities receiving payments from Medicare or Medicaid will be required to be vaccinated. The Centers for Medicare and Medicaid Services (CMS) are developing a compliant Interim Final Rule (with a comment period) that will be issued in October. ² The White House indicated that the mandate will apply to hospitals, nursing facilities, long-term care facilities, dialysis facilities, ambulatory surgical settings, auspices, clinic labs, ambulance providers, and home health agencies that receive Medicare and Medicaid reimbursements. However, little additional information is known, and what has been released by the White House is not perfectly aligned with information coming from the Centers for Medicare and Medicaid Services (CMS).

¹ The expansion of the vaccination requirements for healthcare workers will not be included in the ETS that covers employers with 100 or more employees, so we are treating it in the section with the Executive Order

² CMS Press Release. Biden-Harris Administration to Expand Vaccination Requirements for Health Care Settings. 9 September 2021. Accessible at [this link](#).

CMS has indicated that the rule will be more limited than the White House suggested. According to CMS, the rule will be focused on certified Medicare and Medicaid facilities, which is a substantial subset, but only a subset, of facilities that receive reimbursements. The CMS had also previously suggested that medical and religious exemptions to the vaccination mandate would still be available for these workers, but that point has not been addressed by the White House. Not addressing it has left some wondering whether it will be more difficult for healthcare workers to obtain exemptions since there is specific data showing that higher levels of vaccination rates among providers and staff at healthcare facilities lower the infection rates of patients.³

Finally, enforcement via the existing inspection mechanism may be easier to implement for certified providers, but other providers who obtain Medicare and Medicaid reimbursements may have to establish entirely new procedures to verify that their workers are vaccinated.

II. The Forthcoming OSHA ETS

OSHA has rarely issued Emergency Temporary Standards. In fact, OSHA only released its first COVID pandemic-related ETS in June of 2021. That ETS addressed safety standards and new protection measures for healthcare workers specifically. At the time, indications were that a general ETS, particularly one that is as sweeping as what President Biden has now announced, would not be forthcoming. However, from July-September, the United States saw a surge in both COVID-19 cases and hospitalizations, particularly among the unvaccinated as the more contagious Delta variant of the virus circulated through the country and goals for vaccination rates remained unmet. Then, on 23 August 2021, the FDA approved the Pfizer vaccine, changing its approval from “emergency use authorization” (EAU) to full, regular authorization. The combination of these two factors--increasing cases and hospitalizations with full authorization of a COVID-19 vaccine--led the Biden administration to take a more prescriptive approach to vaccination.

The new ETS should be issued sometime in the next several weeks, but it is important to prepare now. The healthcare ETS that was passed in June had some provisions that went into effect 15 days after publication and others that went into effect a month after publication. The new ETS is likely to follow a similar phase-in process, leaving companies with little runway to react if they do not start preparing ahead of the actual publication of the ETS.

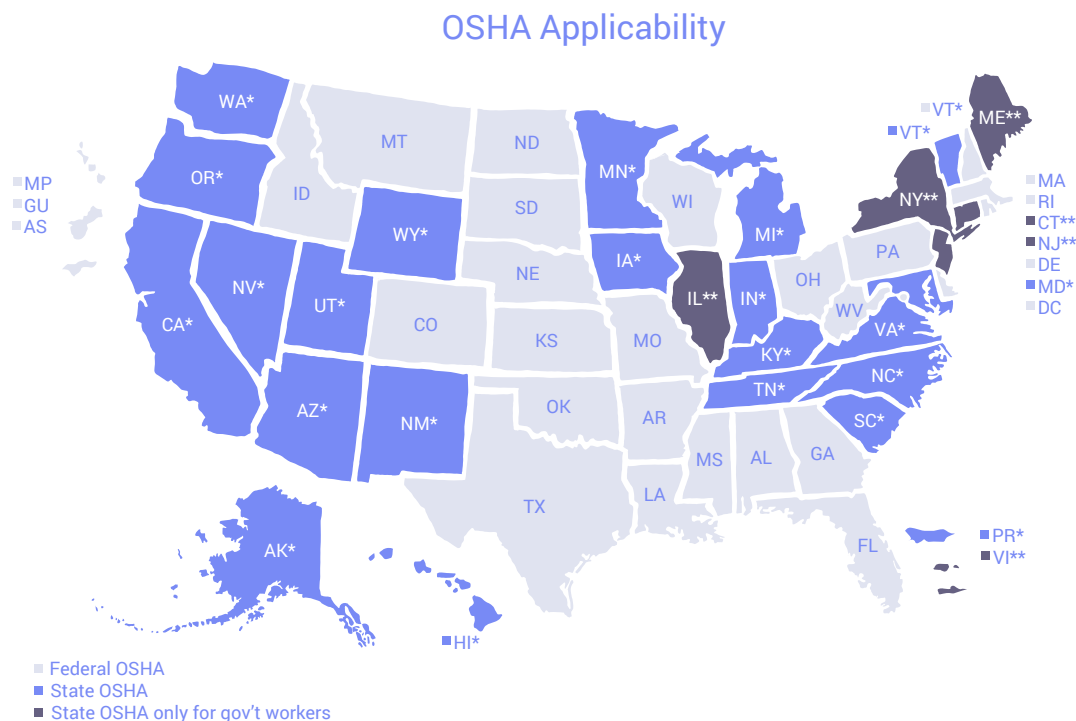
Who Does It Apply To?

The first thing to determine is whether the ETS is likely to apply to your organization. The ETS will apply to any employer with 100 or more employees. That is a total employee count, not a “per site” count, according to OSHA Senior Advisor Anne Rosenthal. Remote employees will most likely count toward the 100 or more employee headcount but, in all likelihood, will not be required to be vaccinated until they are preparing to return to the worksite.

³ *Id.*

Additionally, you need to consider whether your organization is regulated by federal or state OSHA, or a combination of both. If you are regulated by a state OSHA, that state-level agency is responsible to pass a rule that is at least as effective in providing safe and healthful employment and places of employment as the federal OSHA ETS. Their rules do not have to be identical so, if a state so chooses, some employers might be governed by even more strict rules. Because of this requirement, those organizations that are regulated by a state OSHA should prepare as if the federal rule will apply to them because their state will be issuing a rule that either mimics or imposes even greater restrictions than the ETS. Even California OSHA, which until now has had the most strict COVID-19 rules in place, will have to modify its own ETS in order to comply with the new federal standard. States with their own OSHA plans will be required to adopt an ETS within 30 days of publication of OSHA's ETS. See 29 C.F.R. § 1953.5(b)(1).

Not sure if federal or state OSHA applies to you? Here is a graphic to assist you in making that determination. Keep in mind that, if your organization has employees in multiple states, it may be governed by federal rules in some states and state rules in others because employees are governed by the rules of the state where they are working.



A. What Is An Ets?

An ETS is issued by the Secretary of Labor and does not have to go through a notice and comment period like normal agency regulations. If the ETS is to remain in force for more than 6 months, it will have to go through the ordinary rulemaking process. The Secretary of Labor has the authority to issue an ETS when: (1) employees are exposed to grave danger from substances or agents determined to be toxic or physically harmful or from new hazards, and (2) emergency standards are necessary to protect employees from such danger. The current situation meets those standards according to the Biden administration, but that may be one of the issues that receives pushback from states that have indicated plans to oppose the upcoming rule.

B. What Will be in the ETS?

The ETS will contain clarifications to help employers know what processes they have to follow in order to be compliant with the plan that President Biden outlined broadly in his 9 September address.

In his address, President Biden stated that the Department of Labor will put in place an emergency rule requiring “all employers with 100 or more employees to ensure their workforces are fully vaccinated or show a negative test at least once a week.”⁴ While the President did not give any additional information regarding the contours of the rule, OSHA, the agency within the Department of Labor that is responsible for the ETS, has given some additional information about what we can expect to see in the ETS. Employers will be required to give paid time off to employees to receive and/or recover from the vaccine. However, in a press briefing given by Labor Department officials on 10 September, they stated that employers will be able to require employees to use their existing paid time off. We anticipate that employers will have to give additional PTO to those employees who do not have any accrued or remaining.

Additionally, according to OSHA Acting Administrator James Frederick on a conference call on 10 September, employers will have the option to impose stricter rules than those required by the new ETS. This has always been the case--OSHA sets a floor for what employers are required to do in order to protect their workers and create a safe workplace free from known hazards. Employers have the option to adopt standards that are above what is required of them. Frederick explicitly stated that employers will have the option to require all employees who do not qualify for an exemption to be vaccinated--they do not have to offer the weekly testing requirement as an alternative option to vaccination if they do not choose to do so.

C. What Might be in the ETS?

I. Coverage

Covered employers are interested in knowing who in their workforce will be governed by the rule. Simply put, any employee of a covered company reporting to a worksite where they will be in the presence of other individuals will be covered. This includes employees who are working entirely at the company's worksite, employees who are reporting to a customer worksite, and employees who are partially remote but do report to company worksites at times.

¹ White House Briefing Room, Remarks by President Biden on Fighting the COVID-19 Pandemic, 9 September 2021. Accessible at [this link](#).

Because it currently has a fairly robust ETS in place, Cal/OSHA currently provides one of the best roadmaps for which employees are likely to be covered by the federal ETS. Cal/OSHA's ETS requirements do not apply to the following locations and employees:

- Work locations where there is only one employee who does not have contact with other people;
- Employees who are working from home;
- Employees who are covered by the Aerosol Transmissible Diseases regulation; and
- Employees working from a location chosen by the employee, which is not under the control of the employer (for instance, an employee teleworking from a café or a friend's home).

Under these rules, the regulation applies to worksites with only one employee if that employee has even brief contact with other individuals. A similar type of guidance is anticipated in the federal ETS. (Remote federal employees are required to be vaccinated under Executive Order 14043, but we anticipate that private remote employees will not be subject to a similarly strict requirement.)

A common question that will not be answered until we see the ETS is how it will apply to contractors. It is likely that contractors will not be covered, but employers will have the option of requiring more than the federal ETS mandates in regards to the vaccination status of those individuals they allow on their premises. One pitfall that companies should be aware of when determining how to implement ETS-compliant policies is that there are also state guidelines and restrictions in place that may be promulgated by the legislature or governor's office, not the state OSHA. Some states have put rules in place limiting the ability of organizations to require vaccination in order to enter their premises.

II. Costs

Under Cal/OSHA, employers bear the cost of testing employees for COVID-19 when there is exposure to a COVID-19 case or an outbreak at the worksite. The federal ETS will be different in that the testing is mandated not based on exposure but for all unvaccinated employees. The employees, however, will have some degree of choice—they can receive a (free) vaccine or test weekly. For this reason, we anticipate that the federal ETS will likely depart from the Cal/OSHA approach and instead require that employees pay for weekly testing.

While Cal/OSHA requires employers to pay for the costs of tests in situations in which they have some responsibility because they control the premises where the COVID-19 contact occurred, the federal ETS is likely to leave the cost of testing on the employee because employees could have chosen the free vaccine option. However, the 21 states that have to promulgate their own ETS may decide to shift that cost to the employer. To the extent federal or state OSHAs decide to place the burden of testing costs on the employer, they are likely to allow employers to put rules in place that can reduce the costs of testing (for example, by limiting where/how the testing is obtained).

When President Biden announced the forthcoming requirements, he also stated that free testing through the Department of Health and Human Services (HHS) will be expanded. Given that expansion, it may be that there is a third option—neither employees nor employers will bear the costs because enough free testing will be available. However, at least in the beginning of the new requirements, it is unlikely that the increased free testing capabilities will be rolled out. Long wait times for testing at free sites have again become standard in many localities, making those options impractical for those that must be tested every week.

For these logistical and other reasons, companies may desire to pay for the cost of testing or even supply testing kits, even if they are not required to do so under the ETS. If they choose to do so, they should consider the logistics of how to pay for it (e.g. reimbursement or prepaid) and how to provide kits (e.g. send many kits home initially, provide one each week, etc.) These are complicated decisions because companies may not want to purchase unnecessary kits or have employees come to the office to get tested only to find out they are positive for COVID-19.

D. Collecting Information

Companies will need to collect the vaccination status and testing results for covered employees. While the Biden announcement and the subsequent information released by OSHA and the Department of Labor have not outlined how this information will be collected, other federal laws as well as the Cal/OSHA ETS suggest some recordkeeping requirements.

There are several methods available for documenting vaccination status or testing results. One method is for the employer to retain a copy of the proof of vaccination that the employee provides (such as a copy of the actual vaccine card or other health care document showing vaccination status). Similarly, employees may be required to provide proof of vaccination, but the company maintains only a record that the employee presented proof without retaining a copy of the proof itself. Finally, the company could permit employees to self-attest to vaccination status (and/or employees additional information such as the date(s) and brand of the shot(s)) and the company maintains a record of the attestations.

In California, Cal/OSHA allows companies to verify vaccination status by any of these methods. Cal/OSHA has also specified that “asking employees or applicants for proof of vaccination is not a disability-related inquiry, religious creed-related inquiry, or a medical examination,” making it a permissible inquiry.

I. Methodology

Companies should consider both the logistics of collecting this information as well as the requirements for its storage, when deciding the best methodology for meeting recordkeeping requirements.

Options for data collection include using a company intranet, other software, or non-web-based systems, such as by manual, in-person review of proof by an employee. Whatever collection methodology a company selects, it should limit employees’ abilities to provide unnecessary sensitive health information, such as information relating to disabilities, which would implicate additional legal requirements and create potential for unlawful discrimination. For example, if a company were to offer to provide the vaccinations on-site, the questions asked before the vaccine is delivered could elicit sensitive disability-related information. For that reason, a company should obtain legal counsel before deciding to administer a vaccination program on-site.

The best choices for collecting vaccine information may not necessarily match up with those for obtaining testing results. Because testing requirements are frequent and ongoing, companies that are comfortable with a more manual process for collecting vaccination status information may, if only for practical reasons, need to implement a more automated method for collecting test results.

II. Legal Requirements in Recordkeeping

Information relating to an employee's vaccination status, exemption from vaccination, or testing information must be retained as a confidential medical record under the Americans with Disabilities Act (ADA). This means that the information must be stored separately from an employee's personnel file. Companies should also restrict who has access to this information and limit that access to those individuals with a business purpose for obtaining the information.

We do not yet know how long these records must be retained, but in California the records "need to be maintained for the length of time necessary to establish compliance with the regulation, including during any Cal/OSHA investigation or appeal of a citation." Federal OSHA guidelines require that some records be kept for 30 years if they meet OSHA's definition of a medical record. Records that are prepared by healthcare providers fall under that definition and must be maintained for 30 years. It has widely been interpreted that copies of vaccination cards, which cards are prepared by healthcare providers, are subject to that 30-year retention rule.

To avoid that long-term requirement, many companies that are already collecting employees' vaccination status information are doing it via self-attestation or by reviewing but not making a copy of vaccination cards. In order to encourage collection of vaccination documentation, Cal/OSHA has said that it would not subject the records to the 30-year record retention requirements that apply to some medical records under Cal/OSHA. Federal OSHA may follow that same guidance and issue a determination that vaccination cards are not subject to the 30 year retention rule.

At a minimum, companies should be planning to maintain their records for a minimum of one year due to ADA rules regarding medical records.

I. Tracking Who is in the Workplace

As part of their recordkeeping requirements and to ensure compliance with the ETS, it is likely that companies will be required to track who is in the workplace. Tracking of employees will be especially important if the ETS is limited to employees who enter the office and not to remote workers. If a remote worker were to go into the office, even for just one meeting, they would need to either show proof of vaccination status or submit to testing.

Companies will need to be able to track who is in the office and have a procedure in place to determine if the individual is vaccinated or has a negative test result at least weekly. Additionally, they should have procedures in place regarding how to proceed if an individual enters the workplace without complying with the ETS.

E. Written Policies

As indicated by all of the recordkeeping requirements, companies that have navigated the pandemic without COVID-19 policies should put formalized policies in place. It may be an explicit requirement of the ETS (as it is under the Cal/OSHA ETS), but even if it is not, there is no practical path forward for complying with the ETS without a written policy. Even if a company currently has a COVID-19 plan, it will need to be updated to reflect the ETS and all of its new requirements.

COVID-19 policies will need to include a number of topics. Companies may desire, for example, to update their mask requirements. Companies may have implemented mask rules in lieu of vaccine requirements, but CDC guidance has changed (masks are now recommended even for vaccinated individuals in most indoor situations), and many companies have not updated their rules subsequent to that change.

Companies may be required to provide certain information to employees under the ETS. In California's ETS, for example, companies must provide employees with information regarding how they can be tested for COVID-19, such as through the local health department or at a community testing center. The Path Out of the Pandemic Plan calls for federal investment of \$2 billion dollars to procure 280 million rapid and at-home tests, increasing the availability of these tests. Medicaid will also be required to cover at-home tests. The availability of at-home tests was much more limited when Cal/OSHA implemented its ETS, so, while Cal/OSHA did not mandate this specific information, it is likely that the federal ETS will require companies to provide employees with this information or some variation of it.

In deciding what goes into a robust written COVID-19 policy, companies covered by the new ETS will have to consider how to address employees who refuse to get tested or vaccinated. While failure to comply with the requirement would give a company cause for termination, there has been significant discussion around a current shortage of employees in the workforce. It is possible that the vaccine and testing mandate could exacerbate the difficulty in finding qualified workers.

Although it could bring some people back into the workforce who stepped out of it due to concerns about being exposed to COVID-19 at work, [research from the Society for Human Resource Management \(SHRM\)](#) found that 28 percent of employed Americans say they will not get the COVID-19 vaccine even if it costs them their job. However, the Kaiser Foundation COVID-19 Vaccine Monitor found that only 14% of people will “definitely not” receive the vaccine. Because covered individuals who refuse to be vaccinated could still opt for weekly testing, it is unclear what impact this will have on the workforce as none of the surveys specifically addressed whether the individuals would be willing to submit to testing as an alternative. It is possible that employees who are unwilling to submit to vaccine or testing requirements might move to smaller companies that are not subject to the ETS.

Finally, companies will need to continually monitor changes to the ETS. The CDC currently defines “fully vaccinated” as two doses of the Pfizer or Moderna vaccines or one dose of the J&J vaccine, but this could be updated later to include required boosters

F. Penalties

It is anticipated that ETS violations will be treated as serious or willful violations, which currently carry a penalty of up to \$13,653 per instance but can ratchet up to maximum penalties of \$136,532 for willful violations.⁵ A willful violation occurs when the employer either knowingly fails to comply with a legal requirement (purposeful disregard) or acts with plain indifference to employee safety. Given the wide coverage of President Biden's announcement and the pandemic itself, companies that fail to implement policies for complying with the new ETS are going to struggle to show that failure was not willful.

It is anticipated that OSHA might treat each instance of an employee not following the vaccinate or test guidelines as a separate violation, thus exponentially increasing the penalty potential for each covered company. If a company had ten non-compliant employees and it was determined that a willful violation occurred, there could be over \$1.3 million in penalties.

III. Potential Legal Challenges

Texas, Florida, Ohio, Arizona, and at least 20 other states have already threatened to sue. The Attorney General of Arizona, Mark Brnovich, hurried to federal court to file the first suit. Although the case is not yet ripe because we do not actually have the ETS, these types of suits can be successful (once there is an actual rule in place to object to).

A federal judge recently enjoined New York State's requirement that medical workers be vaccinated because that requirement did not provide for a religious exemption. We do know that the federal rule will allow for religious and medical exemptions, so, at a minimum, it will have a better chance of survival than New York's rule currently appears to have. Once the ETS is released, the OSHA Act allows plaintiffs to file petitions for review directly in a federal court of appeals, so challenges by the states are not the only cases OSHA will have to contend with.

Types of potential legal challenges the ETS will face include constitutional challenges such as Commerce Clause or Equal Protection challenges (based on medical condition or religious belief) and statutory challenges. Arizona's suit alleges an Equal Protection Claim, arguing that the requirements treat U.S. citizens and lawfully employed aliens differently than aliens who cross the border illegally. This is an unusual twist on the anticipated Equal Protection arguments, but, given that we already know there will be some kind of allowance for exemptions and that, in reality, there is no vaccine mandate (because the law explicitly allows an alternative for testing), it is hard to anticipate just how each potential type of challenge might be likely to succeed or fail.

⁵ 29 C.F.R. § 1903.15(d), 86 Fed. Reg. 2964 (Jan. 14, 2021).

Statutory challenges may be easier to allege (or at least to envision at this stage). As explained previously, the Secretary of Labor has the authority to issue an ETS when: (1) employees are exposed to grave danger from substances or agents determined to be toxic or physically harmful or from new hazards, and (2) emergency standards are necessary to protect employees from such danger. It is highly likely that any suit against the ETS will argue that one or both of these requirements are not met. From 1972 to 1983, six ETS challenges were brought, and all but one were successful. Two were successful because OSHA failed to meet the 'grave danger' requirement, two were successful because it failed to meet the 'necessary' requirement.

There is likely to be a large amount of litigation related to the new ETS, and the cases may reach the Supreme Court. However, in the interim, companies will be required to comply with the ETS unless a federal court issues an injunction. The requirements for being granted an injunction are fairly high, so the prudent course for companies is to prepare to implement the ETS instead of relying on a slow court process for relief from it.

IV. Impact On Businesses

A. Small Businesses

Although the ETS will not apply directly to small businesses with fewer than 100 employees, it is still likely to have an effect on them. Even though they will not be required to have one under the ETS, small businesses should still have a written COVID-19 prevention policy to ensure clear communication and set expectations for the workforce. These companies are still governed by other restrictions requiring them to provide their employees with a safe worksite. Ignoring or failing to implement COVID-19 protection procedures would expose the companies to liability.

While the federal ETS will only apply to companies with 100+ employees, different states may decide to implement lower employee thresholds. For example, the current California ETS (which will have to be updated to comply with the forthcoming federal ETS) applies to all companies with any employees who enter the workplace and interact with others, regardless of the number of employees at the company.

Additionally, small businesses may work with larger businesses in some type of business-to-business relationship. Those larger organizations that are required to comply with vaccinate or test requirements under the ETS are more likely to implement vaccination or testing requirements for vendors or other partners to enter their workplaces, so small business will need to come up with their own effective plans for complying with the requirements put in place by other businesses.

B. Large Businesses

The impact of the new rules on large businesses (defined as those with 100 or more employees) is clear. Coordination with different OSHA standards means that businesses located in more than one state will have to determine whether to implement one set of requirements that would be in line with the strictest set of OSHA rules governing it. For example, if California were to implement a new ETS that requires more testing than the federal rules, and a company has headcount there as well as in Florida, which is governed by federal OSHA, the company will have to decide whether to make all of its unvaccinated employees or only its unvaccinated California employees comply with the more strict California rule. While looser requirements may seem easier to administer, it sometimes becomes more difficult to oversee different programs in different states.

Additionally, large employers will have to adopt a written COVID-19 policy that incorporates the new vaccination and testing rules and determines how the company will collect vaccination status and testing result information. This also implicates a company's privacy notice that is given to employees--those will need to be updated. This notice and other information will have to be provided to employees in order to fully execute the ETS and meet other legal requirements. Companies will also have to revisit their time off policies to ensure that employees receive paid time off in order to receive the vaccine and to recover from it if needed.

Additional needs, especially those related to updating policies and procedures, will continue to unfold.

V. Conclusion

The forthcoming ETS and Executive Orders 14042 and 14043 could be the most significant federal actions regarding employment during the pandemic. While previous federal actions were largely geared toward the economic impact of the pandemic on individuals and businesses, these rules are geared toward curbing the pandemic itself, which has previously been left to the states. Two thirds of the American workforce are covered by these new rules. While there is wide speculation about the enforceability of these new requirements, the majority of impacted individuals will be impacted by the forthcoming ETS, not the Executive Orders. It is therefore imperative that companies prepare to comply with the ETS and pay close attention to announcements coming from the Department of Labor and OSHA in the coming weeks.

