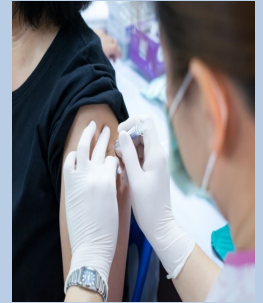


### Biden Announces Vaccine Mandate for Employers with 100+ Employees

President Biden has directed OSHA to develop a rule that will 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 rule will also require covered employers to provide paid time off for the time it takes for workers to get vaccinated or to recover if they are ill post-vaccination. Here is what we know about the rule pertaining to private employers as of today:

- The text of the rule has not been released.
- OSHA will implement the rule through an Emergency Temporary Standard (ETS), which means it will not involve solicitation of public comment. But, there is no guidance as to when the text of the rule will be released, nor as to when the rule will go into effect.
- The White House estimates that a vaccine mandate for all employers with at least 100 employees will impact over 80 million private sector workers. Given the broad reach of the rule and that it would be an unprecedented extension of OSHA's authority, legal experts expect implementation of the rule to be contested.
- Employers with 100+ employees that are not federal contractors do not need to take immediate action, but should keep abreast of developments, as OSHA's vaccine mandate rule is under development and has not been released.



In addition to OSHA rulemaking, President Biden also announced that he has signed an executive order requiring that all federal workers and employees of federal contractors be vaccinated. Source: *Benesch Law* <https://bit.ly/3leVZr1>

### Under ADA, Long-Haul COVID Symptoms May Qualify as a “Disability”

In July 2021 guidance was released that may qualify employees with long-term COVID-19 symptoms to be protected under the ADA if their condition substantially limits one or more major life activities.

Studies indicate an estimated 10% of individuals who contracted COVID-19 experience lingering symptoms for weeks or months after the virus load is undetectable in them. According to current public health information and scientific studies, long-term COVID-19 symptoms may limit an individual's physical work performance and could affect mental capabilities. These include symptoms such as memory lapses and “brain fog” which may substantially limit thinking, memory, or concentration. Not every individual's lingering symptoms will rise to the level of a qualifying disability of course. For example, sporadic or minor symptoms may not substantially limit a major life activity. As always, this means that accommodation requests should be analyzed on a case-by-case basis.

Employers can expect to see a rise in accommodation requests as this issue receives publicity, and should not wait for court decisions to provide examples of employees' COVID-19 symptoms requiring accommodation.

To avoid becoming the test case, employers are well-advised to remember 1) that an employee who says they are unable to do something their employer has asked of them due to long-haul COVID-19 symptoms is potentially asking for an accommodation, 2) the importance of the interactive process when an accommodation request is received, and 3) to consult employment counsel when “tricky” requests come in the door.

Source: *JD Supra*: <https://bit.ly/3hjPC4G>

### Religious Exemptions and Vaccine Mandates

With workplace vaccination mandates in the offing, opponents are turning to a tried-and-true recourse for avoiding a COVID-19 shot: the claim that vaccination interferes with religious beliefs.

According to the KFF, no major denomination opposes vaccination. Even the Christian Science Church, whose adherents rely largely on prayer rather than medicine, does not impose an official policy. That being said, individual clergy members have mounted the anti-vaccine bandwagon, catering to people who reject vaccination for another reason, despite no obvious justification in religious texts for their positions.

If a person claims their privately held religious beliefs forbid vaccination, that defense is unlikely to hold up in court if challenged, legal experts say. Still, the Equal Employment Opportunity Commission grants broad leeway to what constitutes a sincerely held religious belief. As a result, some experts predict most employers and administrators won't want to challenge such objections from their employees.

A state's right to require vaccination has been settled law since a 1905 Supreme Court ruling that upheld compulsory smallpox vaccination in Massachusetts. Legal experts say that right has been upheld repeatedly, including in a 1990 Supreme Court decision that religiously motivated actions aren't insulated from laws, unless a law singles out religion for disfavored treatment.

Source: *LA Times*: <https://lat.ms/3z1HZWB>

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### Open Enrollment: Pro Tips

Open enrollment isn't only a time to allow employees to pick plans or add dependents. It's an opportunity to reinforce the value of your benefit program, help employees to use their benefits in a better way and hear concerns they may have. To prepare for open enrollment here are 3 pro tips:

1. Start planning early – While a plan anniversary can be full of unknowns, such as plan changes or even insurer changes, starting early can help clear out many of the logistics for delivering material. Will employees attend live meetings or will the material be delivered digitally? Today there are many methods to deliver your open enrollment message.
2. Have a focused message – Benefits are complicated and full of many details. People's attention span for benefits is typically very narrow. Having a simple unifying message can help people put the pieces together. Emphasizing ways to pose questions to providers to avoid surprise bills or how to utilize free services you offer can make a difference in what people take away.
3. Offer information in different forms – People are receptive to information in different ways. Utilizing a mix of media can help your message reach your employees. Digital and print material, benefit videos and meetings (virtual or live) can deliver a successful open enrollment.



### Transparency Gets Off to a Rocky and Interesting Start

In an effort to curb health care pricing the federal government has passed a flurry of laws aimed at health care price transparency. The first of these laws to take effect was directed towards hospitals. Beginning in January 2021, the federal government has required hospitals to publish a complete list of the prices they negotiate with private insurers.



The industry's reaction was predictably unenthusiastic. A trade association called the rule unconstitutional and said it would "undermine competitive negotiations." And a group of 4 large hospital associations jointly sued the government to block the rule. They lost the suit, and the appeal, and yet seven months into the requirement, many hospitals are simply ignoring the requirement and posting nothing.

Data from the hospitals that have complied hints at why these powerful industries wanted this information to remain hidden. It shows hospitals are charging patients wildly different amounts for the same basic services, including simple procedures such as an X-ray or a pregnancy test. Analysis of the data provides numerous examples of major health insurers — some of the world's largest companies, with billions in annual profits — negotiating surprisingly unfavorable rates for their customers. In many cases, insured patients are getting prices that are higher than they would if they had no coverage at all. At Massachusetts General, in Boston, different insurers pay between \$877 and \$4,140 for a basic knee MRI. At Baylor Medical Center, in Dallas, an emergency-room foot X-ray costs \$971 for United enrollees, \$1,727 for Blue Cross Blue Shield enrollees and \$832 for someone not using insurance.

CMS is taking a very soft approach to non-compliance. Enforcement to date consists of letters that allow non-compliant hospitals an additional 90 days to comply. CMS has hinted at an increase in penalties, but so far no hospital has been fined.

Source: *The Seattle Times*: <https://bit.ly/3BWcE9v>