



# Employer Vaccine Mandate

COMPLIANCE REVIEW  
SEPTEMBER, 2021

# Parrott: Compliance

Consolidated Appropriations  
Act (CAA)



## Overview

Who does this impact  
What is the requirement  
Regulatory Agency



## Employer Mandate

Thinking thorough this  
mandate  
Vaccination Policy



## Employee Refusal

What happens if an  
employee refuses?  
Religious Objections  
Labor Unions  
Disability  
Accommodations



## Digging Deeper

Non-Compliance  
Outstanding Questions  
Timelines



## Questions

Open Issues

# Mandate Overview

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On September President Biden announced a multi-pronged plan to increase the number of Americans vaccinated for COVID-19.

This Order combined with other, earlier released Federal mandates will impact the following:

- Federal Agencies and Contractors
- Any healthcare agency who receives Medicare or Medicaid funding
- Employers with over 100 employees

This order will be enforced by the Occupational Safety and Health Administration (OSHA)

# Overview: Requirement



- Employees must either be vaccinated, or;
- Submit to a weekly COVID-19 test and produce a negative test, unless;
- Employee requires accommodation due to a disability or sincerely held religious objection
- Employees who work on federal contracts & in healthcare facilities do not have the option of weekly testing, they must be vaccinated

# What Employers Should Know

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Unlike the vaccine mandate for healthcare workers and federal agencies and contractors, there is, in fact, no actual vaccine mandate for employers with 100+ employees. Rather, there is a weekly testing mandate for employer groups.

Also, it is important to know:

- Not yet in effect
- Will not apply to fully remote workers who were never on-site

# Vaccination Policy

Given the breath of this law and the consequences to organizations. Employers will want to start thinking through a vaccination policy.

Employers can require that employees are vaccinated based on the “requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace”.

IF:

- Consistent with State and municipal laws
- Job-related and consistent with business necessity
- Allow for accommodations for medical and religious objections

# Vaccination Policy Options

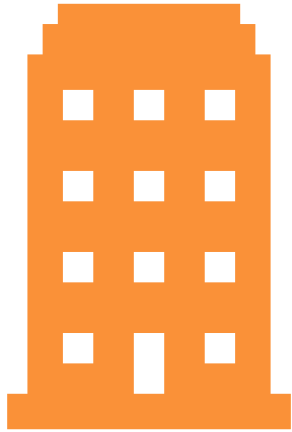
- Voluntary policy
- Hybrid policy based on business necessity
  - Those with face-to-face interactions
  - Onsite only
  - Certain job categories
- Mandated for all
- Phased implementation based on business needs

# Vaccination Policy Implementation

- Be sure your policy takes into consideration federal, state and local regulations for the industry and locations where you have employees
- Hybrid policy based on business necessity
  - Those with face-to-face interactions
  - Onsite only
  - Certain job categories
- Mandated for all
- Phased implementation based on business needs



# Vaccination Policy Implementation



## Communication

- Clearly written policy that includes specifics about your policy. Leave nothing to conjecture. Detail everything.
- Establish a process for employees to provide proof of vaccination
- Include related paid leave information
- Establish a process for exemptions and accommodation requests
- Consider and plan for confidentiality of all information including vaccination status

# Vaccination Policy Risks & Rewards



## Carrot

- You may offer to incentive employees who comply with your policy, this should include employees who have already received the vaccine

## Stick

- Institute penalties for non-compliance
- Employee non-compliance could result in removal of job responsibilities, unpaid suspension and/or termination

# Requirements for Not Vaccinated

- Required vs encouraged to wear masks
- Submit to daily screenings
- Required to maintain social distance from other employees
- Staggered or alternate work schedules
- Restrictions on business travel

# Employee Non- Compliance

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Federal anti-discrimination laws don't prohibit employers from requiring all employees who physically enter the workplace to be vaccinated for COVID-19.

Employers will, however, must comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 and other workplace laws.

If an employee refuses to obtain a vaccine, an employer needs to evaluate the risk that objection poses, particularly if an employer is mandating that vaccine.

# Religious Objections

What is a “sincerely held religious objection”?

- Religious beliefs are for *individuals* to hold – sincerely
- U.S. vs Seeger (1964)
- Employers must only make “reasonable accommodation” but view requests for accommodations as “sincere” according to the EEOC
- Title VII requires an employer to accommodate an employees sincerely held religious belief, practice or observance, unless it would cause an undue hardship on the business. Courts have said that an "undue hardship" is created by an accommodation that has more than a "de minimis" or very small, cost or burden to the employer

# Labor Unions & Disability Accommodations

## Labor Unions

- If a union represents employees, it is advised to reach an agreement with the union before issuing a mandate

## Disabilities

- Should be accommodated

Can require supporting documentation

Ensure and assure no retaliation

# Employer Non-Compliance & Resources

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- \$14,000 per occurrence penalty
  - Potential risk to the company to defend if challenged
  - Staffing shortages
  - Impact to morale, productivity and allegiance

## Resources

- Legal counsel
  - Federal, state and municipal mandates for your location(s) and industry
    - EEOC: What You Should Know...
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# Diving Deeper

- Administration is working on expanding free COVID-19 testing sites around the Country and lowering the cost of at-home testing kits
- CMS to issue final rule with Comment Period in October for June healthcare mandate

## Outstanding Questions

- How will employers count employees for the 100 threshold?
- Who pays for testing
- Will employers be reimbursed for paid time-off?
- Deadline for compliance with vaccine and/or testing requirement



Links and References:  
[What You Should Know](#)  
[OSHA FAQ's](#)  
[NC State Department of Health \(DHHS\)](#)

**Questions?**

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