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COVID – 19 Vaccine Mandates

Presented by
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Today's Presenters



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COVID-19 Vaccine Mandates

- President Biden made announcement in September regarding mandates for:
 - Military and federal employees
 - Federal Contractors
 - Head Start Programs
 - CMS Regulated Entities
 - Larger Private Employers
 - Others

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OSHA's 'Larger Employers' Mandate

- Rule issued Nov. 4
- Applies to private employers with 100 employees or more
- MIOSHA must adopt plan in 30 days (will also apply to state and local employees, including school systems)
- Employers may be covered under eventual MIOSHA rule

Continued

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OSHA's 'Larger Employer' Mandate

- Employers must comply by Dec. 4, with testing program by Jan. 4, 2022
- A few exceptions for employees who do not report to workplace with other employees, work from home exclusively, or work exclusively outside
- Exemptions for medical or religious accommodations

Continued

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OSHA's 'Larger Employer' Mandate

- No option for just testing
- Employees granted exemptions must submit proof of testing every seven days and wear masks at all times.
- Proof of vaccination status must be submitted to and tracked by employers.

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Status of OSHA's Mandate

- Numerous lawsuits filed challenging mandate
- U.S. Court of Appeals for the 5th Circuit has stayed implementation for now saying "government overreach."
- The Biden is administration responding.

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Status of OSHA's Mandate

- U.S. Judicial Panel on multi-district litigation has assigned our 6th Circuit Court of Appeals to decide.
- Generally, 6th Circuit is pro-employee rights.
- May strike because employees should have right to decide
- Will likely end up at U.S. Supreme Court

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CMS Interim Final Rule

- Applies to providers of services in certain Medicare & Medicaid Programs, including but not limited to:
 - ambulatory surgical centers, hospices, programs of all-inclusive care for the elderly (known as PACE), hospitals (including acute care, psychiatric, swing beds, long term care, children's, transplant centers, cancer, and rehabilitation hospitals/inpatient rehabilitation facilities), long term care facilities (including skilled and nursing homes), home health agencies, public health agencies, community mental health centers, etc.

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CMS Interim Final Rule

- “Staff” is broadly defined to include everyone (employees, licensed practitioners, students, trainees, volunteers and others who provide care, treatment or *other services* for the entity or its patients under contract or any other arrangement), regardless of clinical responsibility or patient contact.
- Even if your entity is not covered, some of your employees may be (if so, require for everyone?).

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CMS Interim Final Rule

- Exceptions for those who provide *exclusively* telehealth/ telemedicine services or support services
- Exception only applies if the work is performed *exclusively* outside of the settings where services are provided to the patients and the individual does not have any contact with patients, their families or caregivers.

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CMS Interim Final Rule

- Must ensure that all workers have received, at a minimum, first dose prior to providing care
- Exemptions for medical and religious reasons (must be signed by health care provider – shouldn't allow someone employed by or affiliated with your company)
- Exemptions require proof of weekly testing.

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CMS Interim Final Rule

- Rule does not apply to health care entities (such as physician offices and staff in small health care entities) not regulated by CMS
- State may develop its own rules for other health care entities it regulates

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Implementing Mandate

- Do you know which employees/how many have been vaccinated?
- Start gathering copies of vaccine cards **now** and determine how many or what percentage of employees are not vaccinated.
- Get statements from employees who do not intend to get vaccinated.

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Exemptions

- Medical exemptions:
 - Will likely need to grant/significant burden to show undue hardship
- Religious exemptions:
 - Can deny if causes more than a *di minimus* hardship (inconvenient)

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Exemptions

- Doctor's note for medical exemption:
 - Signed by doctor
 - On letterhead
 - With reason why contraindicated

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Exemptions

- Form for religious exemption
- Can ask:
 - Explanation of firmly held belief
 - If vaccinated in past, what changed?
 - “Attestation” and grounds for discharge

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Exemptions

- Considerations:
 - Remote work possible?
 - How many requested?
 - Staffing issues
 - Should you just deny all religious exemptions?
 - Make **all** exemptions revocable at company’s discretion.

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Requirements for Unvaccinated

- Mask mandate/all day, everywhere
 - Lunch off property required?
 - Social distancing
 - Continue screening questions.
 - PCR negative test results every seven days
 - Employee versus employer paying and scheduling tests
 - Not required if COVID positive within last 90 days
 - Remove from workplace if test results not provided timely.

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Refusals / Failure to Comply

- Place on unpaid administrative leave
 - Compliance required to return
 - Time limitations
 - Failure to comply and return by deadline = job abandonment
 - Voluntary resignation / unemployment

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Time Considerations

- Most mandates require *full* compliance by Jan. 4.
- CMS requires at least first shot before seeing patients.
- One shot versus two shots (three week waiting period between Pfizer and Moderna)
- Two weeks for full immunization
- Boosters not required at this time

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Documentation

- Not in personnel files (keep separately)
- Copies of vaccination cards (or medical records)
- Copies of employee declarations of refusal to vaccinate
- Copies of testing records
- Answers to screening questions
- Track COVID cases

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COVID Infections

- Check CDC website for the current quarantine/isolation requirements when employee:
 - Is exposed
 - Tests positive
 - Has symptoms

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Questions?



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MANDATE - Understanding and Implementing the new Federal COVID-19 Vaccination Rules

11.22.2021
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Mandate Understanding and Implementing the new Federal COVID-19 Vaccination Rules

Date: Nov. 22, 2021
Time: 11:30 a.m. to 12:30 p.m.
Cost: Complimentary

As announced by President Joe Biden in September, vaccine mandates are becoming a reality for private sector employers having 100 or more employees and for providers of services under Medicaid and Medicare. MI-OSHA is required to implement mandates at least as protective within 30 days of OSHA's rule which will also apply to units of government in Michigan.

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Employment Noncompete Agreements Enforced Badly



POSTED BY CLAUDIA D. ORR
11.17.2021

Employers should carefully consider which employees should be bound by noncompete agreements or at least consider selectively enforcing them only against departing employees who can adversely impact the business.

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Thank You!



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