



To: FCA International Contractors
From: FCA International
Subject: **President Biden Announces New COVID-19 Vaccine Mandates, Including “Hard” Mandates for Federal Employees and Contractors and “Soft” Mandates for Private Employers with 100+ Employees**
Date: Sept. 16, 2021

On Sept. 9, [President Biden announced a plan](#) targeted at increasing the number of people vaccinated against COVID-19. FCA International wanted to provide key points finishing contractors should be aware of with this announcement.

New OSHA ETS Standard Requiring Private Employers with 100+ Employees to Implement “Soft” Mandates

President Biden’s plan is to have OSHA issue a new Emergency Temporary Standard (or “ETS”) that will require **all employers with 100+ employees** to mandate that employee ***either***: (a) ***be fully vaccinated against COVID-19*** or (b) ***submit to weekly testing***. As of now, this ETS will apply to all employers with 100 or more employees.

Q: What does this mean to my business today?

A: Nothing currently. An OSHA Rule can take months and sometimes years to go into effect. However, under certain limited conditions, OSHA is authorized to set an ETS that ***take effect immediately*** and are in effect until superseded by a permanent standard. We have no indication on when OSHA will issue an ETS, but it is anticipated to be rolled out within the coming weeks.

Q: Will I be required to implement the ETS once it is released?

A: While OSHA is legally able to make an ETS effective immediately, it’s more likely that they will provide a small window of time for employers to come into compliance.

Q: Is this lawful/unconstitutional?

A: Legal actions are expected once OSHA publishes its ETS. OSHA believes the Occupational Safety and Health Act of 1970 permits the Labor Department to act. Among other things, that law permits the Secretary of Labor to issue an “emergency temporary standard” regarding workplace health or safety if they determine that “employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful,” and that such a standard is “necessary to protect employees from such danger.”

Q: What will the OSHA Penalty be?

A: The administration indicated that companies not complying can face fines of up to \$14,000.00 per violation.

Q: If an employee chooses not to be vaccinated, who pays for the weekly testing?

A: We don’t know yet. This issue will likely be addressed by the ETS rule when it is published.

Q: Do I have to pay for my employees' time off to get the COVID-19 Vaccine?

A: Per President Biden's plan, part of OSHA's ETS rule (that applies to employers with 100+ employees), employers *will be required* to provide paid time off for workers to get vaccinated. Additionally, should the employee get vaccinated and still get COVID-19, employers *will be required* to provide paid time off for workers to recover.

New "Hard" Mandate for Federal Employees and Federal Contractors

President Biden's plan includes executive orders requiring all [federal employees](#) and [contractors](#) to receive the COVID-19 vaccine. Unlike the OSHA ETS, weekly testing *is not* an option for federal employees and contractors. Instead, exceptions to the vaccine mandate will be made "**only** as required by law."

Q: Does this apply to me if I have less than 100 employees?

A: Yes, this mandate is for *everyone that works on federal projects*.

Q: What is the Effective Date?

A: Sept. 9, 2021.

Q: Does this apply to the federal projects I am currently on or have under contract?

A: No. The Executive Order applies to new contracts, extensions or renewals of existing contracts. However, the Executive Order strongly encourages employers to implement the order on existing federal projects.

Bottom Line

President Biden's plan is ambitious, but the full details of it will not be known until federal agencies, such as OSHA, publish the details of the rules outlined by President Biden on Sept. 9. We expect these rules to be published in the coming weeks. The hard vaccine mandate for federal employees and contractors is currently in effect. FCA will continue monitoring this situation as it develops.

Moving Forward

Due to the increased public health concerns of COVID-19, FCA International supports the rights of general contractors, owners, facility managers and business owners to mandate vaccines and/or vaccine policies on their jobsites and in their companies in efforts to provide the safest environment possible. We believe it is the employer's right to decide whether a vaccine mandate and/or testing makes sense for their business, and we fully support those who develop and implement a fair policy.

FCA is very concerned about the difficulty this federal mandate will create for our industry. The signatory construction industry is already facing many challenges. A federally required vaccine mandate on subcontractors would have a negative impact on our diminishing workforce and provide a greater competitive disadvantage for those affected contractors.

Once the ETS is published, FCA will update our members on what they need to know and discuss how we will move forward together as a community for the safety and in the best interests of all in our industry. We expect the OSHA rule will be legally challenged.

Many contractors have reached out to FCA to share their concerns regarding the ETS. For now, continue working under your company policies and procedures and FCA will continue monitoring this situation

and providing our signatory contractors' feedback to OSHA. Stay tuned as more information on this rule comes in.

Lastly, FCA International developed a template your company can send to your employees as an informational resource to keep them updated on the Biden Administration's COVID-19 action plan. [Click here](#) to download the template to place on your company's letterhead. *(Note – template is a direct download)*