



Status of Federal COVID-19 Vaccination Mandate Litigation

January 7, 2022

During 2021, various federal, [state](#), and [private](#) entities instituted Coronavirus Disease 2019 (COVID-19) vaccination requirements to address the pandemic, particularly as the [Delta variant](#)—a highly contagious strain of SARS-CoV-2 (the virus that causes COVID-19)—spread in the United States. The federal COVID-19 vaccination requirements issued to date by the President or executive agencies include those directed at (1) [federal executive agency civilian employees](#) (federal employee mandate); (2) [federal contractors for executive departments, agencies, and offices](#) (federal contractor mandate); (3) [most Medicare- and Medicaid-certified providers and suppliers](#) (Centers for Medicare and Medicaid Services’ [CMS’] Medicare/Medicaid provider mandate); and (4) [employers with 100 or more employees](#) (Occupational Safety and Health Administration’s [OSHA’s] large employer vaccination and testing mandate). These employment- or workforce-based mandates—subject to accommodations required by federal law—either directly require certain employees to receive COVID-19 vaccinations or direct certain employers to impose a vaccination or vaccination-and-testing requirement on their employees or staff.

These federal vaccination mandates have generated numerous legal challenges that have moved quickly through the courts. To date, some of these mandates have been enjoined by courts either on a nationwide basis or only in certain states. **Table 1** below provides a summary of the mandates and their statuses. (For more detailed analysis of these mandates and related litigation, see CRS Report R46745, *State and Federal Authority to Mandate COVID-19 Vaccination*, by Wen W. Shen.)

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Table I. Summary of Federal Nonmilitary COVID-19 Vaccination Mandates
As of January 7, 2022

Federal Mandate	Statutory Authority	Covered Individuals/Entities	Vaccination Requirement	Compliance Deadline(s)	Status
Federal Employee Mandate (Executive Order 14,043)	5 U.S.C. §§ 3301, 3302, 7301	Federal executive branch employees	Employees must be fully vaccinated ^a unless granted a legally required exception based on a disability/medical condition or a sincerely held religious belief. Remote-working employees are subject to requirement.	Receive a one-dose vaccine or two-dose vaccine series by November 8, 2021. Be fully vaccinated by November 22, 2021.	In effect
Federal Contractor (Executive Order 14,042)	40 U.S.C. § 101 <i>et seq.</i> ; 3 U.S.C. § 301	Federal contractors/subcontractors that have a covered contract with executive departments and agencies	Covered contractors must ensure covered contractor-employees are fully vaccinated, except in circumstances where an employee is legally entitled to an exemption based on a disability/medical condition or a sincerely held religious belief. Remote-working covered contractor-employees are subject to requirement.	As of January 18, 2022, covered contractor-employees must be fully vaccinated on the first day of performance on a new contract or the renewal, extension, or exercised option of an existing contract.	Enjoined by courts: Kentucky v. Biden, No. 21-6147, 2022 WL 43178 (6th Cir. Jan. 5, 2022) (declining to stay the district court's preliminary injunction in KY, OH, and TN); Georgia v. Biden, No. 1:21-cv-00163 2021 WL 5779939 (S.D. Ga. Dec. 7, 2021) (enjoined the vaccination requirement nationwide).

Federal Mandate	Statutory Authority	Covered Individuals/ Entities	Vaccination Requirement	Compliance Deadline(s)	Status
<p>OSHA’s Large Employer Vaccination and Testing Mandate (OSHA ETS)</p>	<p>29 U.S.C. § 655(c)</p>	<p>In all jurisdictions, private employers with 100 or more employees. In 26 states, Puerto Rico, and the U.S. Virgin Islands with OSHA-approved state plans, state and local government employers with 100 or more employees.</p>	<p>A covered employer must establish and enforce a policy that either (1) ensures employees are fully vaccinated, except in circumstances where an employee is legally entitled to an exemption based on a disability/medical condition or sincerely held religious belief; or (2) requires employees to be fully vaccinated or provide proof of regular COVID-19 testing and wear a face covering when indoors. Employees who work remotely, at a site where other people are not present, or exclusively outside are <i>not</i> subject to the requirements.</p>	<p>Covered employers must establish and begin to implement the vaccination policies by January 10, 2022. Covered employees must receive either a one-dose vaccine or a two-dose vaccine series, or begin regular testing by February 9, 2022.</p>	<p>In effect. (See <i>In re MCP No. 165</i>, Occupational Safety and Health Admin., Interim Final Rule: COVID-19 Vaccination and Testing, 2021 WL 5989357 (6th Cir. Dec. 17, 2021) (dissolving a prior stay of the ETS by the U.S. Court of Appeals of the Fifth Circuit)) Supreme Court to hear oral argument on petitioners’ application to stay the ETS on January 7, 2022.</p>

Source: CRS analysis of the relevant Executive Orders, CMS IFR, and OSHA ETS, as well as related litigation.

- a. For purposes of the relevant Executive Orders, CMS IFR, and OSHA ETS, individuals are considered “fully vaccinated” for COVID-19 two weeks after they have received either a one-dose vaccine or a two-dose vaccine series.

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