

OSHA Issues COVID Vaccine Mandate Forcing 84 Million Workers to Comply by Jan. 4 Deadline, States Vow to Sue



The Occupational Safety and Health Administration (OSHA) today, [issued an emergency temporary standard](#) (ETS) giving employers with more than 100 employees until Jan. 4 to comply with President Biden's [COVID vaccine mandate](#) or [face large fines](#).

The 490-page rule, which will be [published in the Federal Register](#) on Nov. 5, says: "covered employers must develop, implement and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work in lieu of vaccination."

The rule [requires weekly testing](#) and mandatory face-masks for workers who choose not to get vaccinated. It also requires

employers to provide paid time off for workers to get vaccinated or recover from any side effects.

However, employees who choose not to get vaccinated must foot the bill for tests, [officials said](#). There is also [no exception](#) to the vaccine mandate for those who have [natural immunity](#) from previous Sars-CoV-2 infection.

The OSHA rule “[requires employers](#) to determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain records of each employee’s vaccination status and maintain a roster of each employee’s vaccination status.”

The rule also requires employers to “report work-related COVID-19 fatalities to OSHA within 8 hours of learning about them, and work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the hospitalization.”

However, there is no requirement under the rule that employers report [COVID vaccine injuries](#) that result from the mandate.

The ETS only applies to [non-federal employees](#) who report to the workplace. It does “not apply to employees while they are working from home, or employees who work exclusively outdoors.” The mandate does not carve out an exception for truck drivers – a potential problem given growing driver shortages and the supply chain crisis.

On July 30, Biden [ordered federal workers and contractors](#) to be vaccinated, with no testing option. Federal workers [have until Nov. 22](#) to get the shots.

To enforce Biden’s mandate, OSHA plans to [send agents into the workplace](#) to ensure employers are in compliance with the rule. If a company commits a willful violation, it can be fined up to \$136,532, a White House official during a [press briefing](#) on Nov. 4. The standard penalty is \$13,653 for a single violation

but could increase with subsequent violations.

According to [OSHA](#), it intends its ETS to pre-empt all state and local laws. “In particular, OSHA intends to preempt any state or local requirements that ban or limit an employer from requiring vaccination, face-covering or testing,” OSHA’s ETS [summary](#) states.

Companies with more than 100 employees will have until Jan. 4 to have their staff fully vaccinated with two doses of an mRNA vaccine or one dose of Johnson and Johnson (J&J), after The White House said Thursday it would push back its federal contractor [vaccine mandate deadline](#) from Dec. 8 to Jan 4.

“Keep in mind that the OSHA rule coming out is not a mandate for a vaccine. Employers can put in a mandatory vaccination program, or there’s the other route of vaccination for those who choose to and testing and masks for those other employees that don’t,” a [White House official](#) said.

OSHA said it will [help employers](#) develop their vaccine-or-testing requirement by providing sample plans, fact sheets and answers to frequently asked questions, and will begin outreach to businesses.

The Office of Management and Budget [completed its regulatory review](#) of the emergency temporary standard and sign off on Monday.

In addition to OSHA’s new rule, the Centers for Medicare and Medicaid Services (CMS) [issued a separate rule](#) on Nov. 4 that requires health care workers in facilities participating in Medicare and Medicaid to be fully vaccinated.

The CMS rule [will also go into effect](#) on Jan. 4 and applies to more than 17 million [clinical and non-clinical workers](#) at 76,000 health care facilities nationwide that receive federal funding from Medicare and Medicaid. Unlike [OSHA’s rule](#), there will be no option for weekly testing in place of vaccination.

“Bottom line is vaccination requirements work. The actions we’re taking tomorrow will lead millions of Americans being vaccinated, protecting workers, saving lives, strengthening our economy, and helping to accelerate our path out of this pandemic,” an [official said](#) on Wednesday.

States and lawmakers plan to sue Biden over vaccine mandates

Numerous states have vowed to file lawsuits against the Biden administration over its vaccine mandate now that OSHA has released its rule, including [Missouri](#), [Indiana](#), [Kentucky](#), Tennessee, [Arizona](#), [Mississippi](#), [Montana](#), Alabama, Arizona, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Nebraska, New Hampshire, Oklahoma, Texas, Florida, South Dakota, [Ohio](#), [Wyoming](#), Idaho, [Utah](#) and Alaska.

Eric Schmitt, Missouri’s Attorney General, [announced](#) today he was filing a lawsuit against the Biden administration over the vaccine mandate as soon as it hits the Federal Register on Friday.

“We will be on file first thing tomorrow morning to halt this illegal, unconstitutional attempt by the Biden Administration and the federal government to impose their will on thousands of Missouri businesses and millions of Missourians,” Schmitt said. “Missouri will not roll over, we will not back down – we will file suit imminently.”

In a [tweet](#), Schmidt said, “The OSHA rule reads like the manifesto of a mad tyrant. We’ve always known forced masking isn’t about science – it’s about power & control & now the Biden Administration wants it to be a federal punishment for choosing to not get vaccinated.”

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We’ve always known forced masking isn’t about science – it’s about power & control & now the Biden Administration wants it to be a federal punishment for choosing to not get

vaccinated. [#NoVaccineMandates](#) [#NoMaskMandates](#)
pic.twitter.com/9nckWuuqNz

– Eric Schmitt (@Eric_Schmitt) [November 4, 2021](#)

In response to [OSHA's announcement](#), the Texas Attorney General announced plans in a [tweet](#) to sue Biden once this “illegal, unconstitutional regulation hits the Federal Register.”

A group of lawmakers are also [planning to introduce](#) a resolution to strike down OSHA's vaccine mandate. In a [statement](#) issued on Thursday, Rep. Virginia Fox (R-NC), House Education and Labor Committee Republican Leader, confirmed GOP lawmakers on her committee will “introduce immediately a Congressional Review Act resolution to nullify OSHA's ‘emergency’ rule when it is received by Congress.”

More than [three dozen Senate Republicans](#) are moving to formally nullify Biden's vaccine mandate on private employees under the Congressional Review Act – the official process for Congress to eliminate an executive branch rule.

□□“Now, when we're finally at kind of an equilibrium, you're putting an ultimatum on them,” Sen. Mike Braun (R-In), a businessman and member of the Senate Subcommittee on Employment and Workplace Safety, [told Fox News](#). “Either get the vaccine or lose your job.”

The mandate would be “the single biggest disruptor in one fell swoop” to the business community, Braun said.

In a [series of tweets](#), Ben Shapiro, New York Times best-selling author and editor of the [Daily Wire](#) said:

“So, OSHA is promulgating this insanely authoritarian regulation on an emergency temporary basis. They're seeking to make a rule permanent. Here are the questions they are asking about when formulating a permanent rule:

1. Forcing it on employers with under 100 employees.
2. Forcing fully vaccinated people to be masked.
3. No exceptions for prior immunity.
4. Getting rid of testing as an alternative to vaccination.
5. Testing more than weekly.
6. Higher standards for masks.
- 7. Social distancing, physical barriers, and further ventilation requirements.

In other words, this is only the beginning of authoritarianism. If made permanent, the OSHA rule would be far more onerous. They could push a national vaccination AND mask mandate.”