What President Biden's Vaccine Mandate Means for Employers

Recently, the White House directed the Occupational Safety and Health Administration (OSHA) to draft an emergency temporary standard (ETS) for private employers. Soon, employers with 100 or more employees (likely measured companywide, not by location) will need to adapt their vaccine policies and enforce one of the following:

- Require employees to get vaccinated against COVID-19
- Require unvaccinated employees to produce evidence of a negative COVID-19 test each week

The rule will also reportedly require large employers to provide their workers with paid time off to get vaccinated and recover from any vaccination-related side effects (e.g., chills).

All aspects of this upcoming rule are subject to modification until OSHA publishes the rule. The ETS is expected to come in the weeks ahead; however, an actual release date is uncertain. Once an ETS is issued, it can only remain in effect for six months before a permanent standard must replace it.

What Employers Can Do Now

Here are some actions employers can consider to prepare for the mandate:

- Determine whether weekly negative testing will be allowed as an alternative to COVID-19 vaccination.
- Consider how to handle accommodation requests for those seeking vaccination exemptions.
- Plan out systems to adequately and confidentially track employee vaccination statuses.
- Plan for potential staffing shortages or scheduling changes to afford employees time to get vaccinated.

This list is nonexhaustive, as certain considerations will be unique to individual employers.

Employers should stay tuned for specific details to be announced by OSHA shortly.

DOL Announces Final Rule on Tip Regulations

Recently, the U.S. Department of Labor (DOL) announced a final rule that will amend Fair Labor Standards Act (FLSA) regulations for tipped employees. The final rule is expected to become effective on Nov. 23, 2021.

Overview of the Rule

The final rule prohibits managers and supervisors from keeping any portion of an employee's tips, regardless of whether the employer takes a tip credit. New language in the FLSA regulations clarifies that managers and supervisors may only keep the tips they receive directly from customers based on the services they directly and solely provide.

The final rule also prohibits employers, managers and supervisors from receiving tips from—but not contributing tips to—an employee tip pool. However, the final rule allows employers that do not claim a tip credit (meaning they pay their tipped employees the full minimum wage rate instead of the tipped employee minimum wage rate) to impose a tip pooling arrangement that includes employees in the establishment who are not employed in an occupation in which they customarily and regularly receive tips (e.g., dishwashers, cooks).

The DOL is of the opinion that civil money penalties are "an important equalizer in the economy by helping to ensure fair competition for responsible employers." For this reason, the final rule restores the DOL's ability to impose penalties of up to $1,100 per violation against employers that take tips earned by employees, regardless of whether the violations were repeated or willful.

Employer Takeaway

Employers with tipped employees should become familiar with this rule and adjust their practices to comply with this rule by its effective date.

Reach out to Apex Benefits today for more workplace resources.

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