



COVID-19 Vaccine Compliance for Healthcare Employers

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Topics

- Current landscape of requirements
- Specifics of the CMS vaccine rule for healthcare employers
- Comparison of CMS rule to OSHA emergency standard
- Managing obligations regarding unions, leave, and accommodations
- Practical advice for mitigating retention and cost issues



Current Vaccine Compliance Landscape

- Centers for Medicare & Medicaid Services Rule
 - Requires vaccinations for covered healthcare employees
- June 21, 2021 OSHA Emergency Standard
- November 4, 2021 OSHA Emergency Standard
 - Requires vaccination or regular testing
- Executive Order re: Federal Contractors
 - Requires vaccination for federal contractors and subcontractors
- State and Local Vaccine Mandates
 - State laws requiring vaccines for certain healthcare workers (e.g., Colorado, New York, Oregon, Pennsylvania (limited), Washington)
 - State laws requiring vaccines or testing for certain healthcare workers (e.g., California, Massachusetts, New Jersey, Pennsylvania)



CMS Vaccine Rule



- Covered staff must receive first dose by December 6, any second dose by January 4
- Applies to all staff working at Medicare/Medicaid-certified entities, including most employees at:
 - Hospitals
 - Ambulatory Surgery Centers
 - Outpatient Rehabilitation and Long Term Care Facilities
 - Mental Health Centers
 - Independent clinics and offices *when they interact in person with staff or patients of Medicare/Medicaid certified entities*
- Current status: Interim, challenged in court, but prepare to follow it

Other Key Aspects of CMS Rule

- Also applies to staff interacting with staff at covered facilities, regardless of their clinical and patient responsibilities
 - Even staff who just occasionally interact with other covered staff or patients at covered facilities
- “Staff” is broader than “employee” – includes volunteers and contractors
- Requires a specific written policy
- Exemptions:
 - Employees entitled to disability or religious accommodations per federal law
 - Full time remote employees
 - Employees at physicians’ offices and assisted living facilities, and employees providing Medicaid home care service *when they do not interact with staff or others at covered facilities*

CMS Rule vs. OSHA Standard

OSHA Standard	CMS Rule
Allows employers to accept weekly negative tests	Requires employees to be fully vaccinated
January 4 is deadline for being fully vaccinated or submitting weekly negative tests	December 6 is deadline for first vaccine dose
Covers employers with 100 or more employees	Covers any staff of a Medicare/Medicaid-certified facility, and anyone interacting in person with such staff
Allows employers to accept employees' attestations as proof of vaccination in certain circumstances	Requires formal documentation as proof of vaccinated status
OSHA must show ETS was "necessary" to protect employees from "grave danger"	CMS has broad statutory authority to establish health and safety requirements
Not immediately effective in states with OSHA-approved state plans	No states exempt

Leave and Accommodation Obligations

- Accommodations
 - Disabilities (as defined by ADA)
 - Sincerely held religious beliefs
- Leave obligations
 - June 2021 OSHA ETS
 - November 2021 OSHA ETS
 - State law
 - ADA and FMLA



Union-Related Obligations



- Question of compliance is not subject to bargaining
- Areas of employer discretion *may* be subject to bargaining, such as:
 - Procedure for addressing disability and religious accommodations
 - Vaccine or testing for employees covered only by OSHA ETS
 - Vaccine incentives
- What waiver standard will apply?

Other Compliance Issues


- Administering vaccines
- Documentation and recordkeeping
- Policies and forms
- Protecting against retaliation claims



Mitigating Morale, Retention, and Cost Issues



- Testing vs. Vaccines?
- Vaccine Incentives
- Other Techniques
- Other Cost Considerations



Questions & Answers



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