



SCWA Legislative Update

November 5, 2021



OSHA Issues Rules on Employee Vaccinations

In early September, President Biden announced he was taking steps to get more Americans vaccinated.

On Thursday, the administration rolled out two of those steps — two different vaccine rules covering more than 100 million workers.

Here are the details:

Deadline is Jan. 4: The first rule, issued by the Occupational Safety and Health Administration, covers companies with 100 or more employees, applying to an estimated 84 million workers. Companies must ensure that their workers are either fully vaccinated against COVID-19 by Jan. 4 or that they test negative for COVID-19 at least once a week. The rule will take effect as soon as it's published in the Federal Register.

Workers must get paid time off to get vaccinated: Under the OSHA rule, employers must pay workers for the time it takes to get vaccinated and provide sick leave for workers to recover from any side effects.

Employers don't need to pay for testing: In a move that appears designed to push workers to choose vaccinations over testing, the rule does not require employers to pay for or provide testing to workers who decline the vaccine. However, collective bargaining agreements or other circumstances may dictate otherwise.

Unvaccinated people must wear masks: Unvaccinated workers must also wear face coverings while on the job.

Health care workers don't have testing option under separate rule: A second rule issued by the Centers for Medicare & Medicaid Services requires some 17 million health care workers to be vaccinated by the same deadline, Jan. 4, but with no option for weekly testing in lieu of vaccination. The rule covers all employees — clinical and non-clinical — at about 76,000 health care facilities that receive federal funding from Medicare or Medicaid. Earlier, Biden had ordered federal workers and contractors to be vaccinated, with no testing option. Federal workers have until Nov. 22 to get the shots, while federal contractors have until Jan. 4.

Vaccine requirements - a backlash is expected

But well before the details of the rules were released, there was backlash from Republican-led states, with two dozen state attorneys general threatening to sue the Biden administration.

In a [letter](#) addressed to Biden on Sept. 16, they warned that a vaccine requirement would drive further skepticism of the COVID-19 vaccines and cause some workers to leave their jobs, further

straining an "already-too-tight labor market." They also asserted that an OSHA rule would be illegal and disputed the notion that COVID-19 is a work-related hazard that falls under the agency's jurisdiction. Companies covered by the OSHA rule can challenge it in court, and challenges are expected in the coming days.

Already, employers have expressed concern about the deadlines imposed by OSHA. Evan Armstrong, a vice president with the Retail Industry Leaders Association, says figuring out who's vaccinated and who's not and imposing a mask mandate for unvaccinated workers by an early December deadline will be a challenge for retailers, as will giving workers who decide to get vaccinated paid time off to do so as the holidays draw near.

"The holiday season is crucial for retail, and it's already busy," he says. "We had already been operating with the talent shortage pretty much the entire year."

This week, the Biden administration quickly asserted its legal authority in issuing the rule, citing the responsibility OSHA has to provide workers with safe and healthy working conditions and to act quickly when workers are found to be facing grave danger.

The federal government is largely relying on companies to self-enforce the rule

In the case of the OSHA rule, [enforcement will largely fall to companies](#) themselves. With only a couple thousand state and federal OSHA inspectors nationwide, there is no mechanism for checking up on millions of workplaces to see whether they are in fact keeping vaccination and testing records. Rather, OSHA inspectors will mostly respond to employee complaints and add COVID-related inspections to their to-do lists when they are already on-site somewhere. Employers who violate the rule can face fines of up to \$13,653 per violation for serious violations and 10 times that for willful or repeated violations.



IRS Backlog on Business Returns

The Covid-19 pandemic caused a backlog of nearly 8 million paper-filed business tax returns at the IRS in 2020, according to a report recently issued by a U.S. Treasury Department watchdog.

That represents a 3,230% increase relative to the end of 2019, when the IRS had about 239,000 paper returns waiting to be processed, according to the report, published by the Treasury Inspector General for Tax Administration.

The delays are largely a result of "unprecedented and drastic actions" the IRS took to protect employees and taxpayers during the Covid-19 pandemic, the report said.

Those measures included shutting Tax Processing Centers and other offices nationwide in early April and extending the federal income-tax filing deadline to July 15.

Backlogs primarily affected employment tax returns, nearly 5.5 million of which were awaiting processing at the end of 2020, according to the watchdog report. Delays also affected business tax returns for partnerships, corporations, estates and gifts, fiduciaries and tax-exempt organizations, for example.

The business tax return backlog has declined significantly, to 291,000 as of July 2021, according to a letter written by Kenneth Corbin, commissioner of the IRS wage and investment division, in response to the report.

The IRS expanded its telework operations, hired about 3,500 new employees in processing operations and transshipped more than 2.3 million returns, forms and documents between processing centers to balance inventories and prevent bottlenecks, he said.

“We took, and continue to take, innovative actions to address the accumulation of inventory while simultaneously protecting the health and safety of our employees and the taxpaying public,” Corbin wrote Aug. 11.

The agency also offered incentive pay and overtime for employees, according to the report.

However through October, the IRS continues to have difficulty hiring enough staff to continue processing tax-year 2020 returns, the report showed. The agency had met 63% of its recruitment goal for processing operations as of July, Corbin said.

“The inability of the IRS to hire sufficient staff will affect taxpayers awaiting refunds or that have claimed pandemic business credits,” the report said.



Qualified Small Business Stock Under Fire

Lawmakers have proposed a retroactive tax increase in the \$1.75 trillion reconciliation bill that will hurt small business owners, small business employees, and small business investors.

Take action: [tell your Senators & Representatives to defend the small business economy by protecting QSBS. Your message will make a difference.](#)

Background: Since 2010, Qualified Small Business Stock (QSBS) has received preferential tax treatment compared to stock in big businesses, because lawmakers understood that small businesses were the economic engine of our economy. Presidents Obama and Trump supported QSBS because it encouraged small business formation, investment, and hiring.

What lawmakers want to change: Under current law, people who sell QSBS get a 100% tax exclusion. Lawmakers in Congress have proposed eliminating the 100% benefit, including on stock that was acquired up to 12 years ago.

- **Example:** Someone invested \$100,000 into a qualified small business in 2010. When the company is sold later this year, their gain is \$500,000. Under the law today, they would pay no Federal tax on that sale. But if lawmakers pass their bill, they would pay an extra \$84,400 in Federal taxes.

Look back: If people had known the rules would change, they would have made different decisions about how to structure their companies, compensate their employees, where to invest, and when to sell.

Look forward: if passed, holders of QSBS will pay billions in added taxes instead of getting the tax break they were promised:

- Fewer small businesses will be formed
- It will be harder for small businesses to compete for talent against big companies
- It will be harder for small businesses to raise money from investors
- Small businesses will owe billions more in taxes even as the economy struggles



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