

Are Biden's vaccine requirements legal?

Shortly after President Biden announced a new vaccine mandate to combat the recent COVID-19 surge driven by the Delta variant, some conservative governors [vowed to file lawsuits challenging the plan](#). Some already have.

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Last Tuesday, Arizona became the [first state to sue](#) the Biden administration over COVID-19 vaccine mandates.

In an address to the nation Sept. 9, Biden outlined his multistep ["Out of the Pandemic"](#) plan, which includes vaccine mandates that will affect about 100 million Americans — two-thirds of all workers. Under the plan, the federal government will require all federal executive branch workers, as well as all employees of federal contractors, to be vaccinated.

Previously, federal employees had the option to get vaccinated or undergo regular testing.

"If you want to work with the federal government and do business with us, get vaccinated," Biden said. "If you want to do business with the federal government, vaccinate your

workforce."

This vaccine order will cover about 90 percent of approximately 4 million federal employees. However, it does not apply to non-executive-branch employees, such as members of Congress or judicial employees.

The question for many was whether such a mandate will stand up to legal challenges.

Robert Field, professor of law and public health at Drexel University, told Yahoo News that Biden's mandates for federal employees are "clearly constitutional" because "it is within the president's power to control the executive branch and the people who work for it."

The new proposal also requires anyone who works in a hospital, home health care environment or other medical facility that treats patients on Medicare and Medicaid to be vaccinated. This was already a requirement for health care workers in nursing homes that receive funding from the federal programs.

The decision will cover a total of 17 million health care workers.

Video: Are Biden's vaccine requirements legal? Yahoo News Explains (Yahoo! News)

Field says Biden is also “on very clear footing” when it comes to this part of the new mandate, because federal agencies can set requirements for federal funding to ensure the safety of patients and staff.

The most controversial piece of the president’s plan is his directing the Department of Labor to issue an emergency rule requiring private employers with 100 or more employees to ensure their workforce is vaccinated or tested on a weekly basis.

These employers will also be required to provide paid time off to workers who decide to get vaccinated, so they can recover in the event of experiencing any short-term side effects from the shot.

According to the president, the Department of Labor’s Occupational Safety and Health Administration (OSHA), will be formulating and enforcing this new rule as an Emergency Temporary Standard (ETS).

Congress created OSHA in 1970 to ensure safe and healthful working conditions for workers by setting and enforcing such standards. The agency can enact these regulations and enforce them immediately if a “grave danger” to workers is present. For example, it issued an [ETS for all health care workers](#) in June, stating that “employee exposure to SARS-CoV-2, the virus that causes COVID-19, presents a grave

danger to workers in health care settings."

Field says the president could expect to face some challenges in trying to implement these mandates for private employers, and he expects that OSHA's authority to issue emergency standards will be tested.

"OSHA has only tried about 10 times in its history" to issue these standards, Field says, and just six have gone into effect. "Almost half of them have, in fact, been struck down." However, he says the current state of the COVID-19 pandemic meets the criteria for a medical national emergency.

"The Biden administration has a pretty strong argument that a pandemic that's killed almost 700,000 Americans, and that is now killing almost 2,000 [Americans] a day, is a national emergency that qualifies under OSHA's authority," he said.

Another challenge the Biden administration will face will be whether OSHA, which is severely understaffed, will be able to enforce the new rule.

The agency, Field says, has always been understaffed, but under the Trump administration the number of workplace safety inspectors was reduced to the lowest level since the early 1970s.

OSHA now has an estimated 800 safety and compliance

inspectors who will be tasked with covering more than 100,000 private-sector companies that will be affected by the new rule.

All the mandates include religious and medical exemptions. Employers in those cases must give workers a choice between showing proof of vaccination and undergoing regular testing.

"I think it's a bit of a misnomer to call it a vaccine mandate. ... It's an option," Field said. "You don't have to be vaccinated if you submit to weekly testing."

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