

# COVID-19 Vaccine Mandates: Legal Update

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# Biden Administration's "Path Out of the Pandemic"

- **OSHA's Vaccination Mandate**

- OSHA to develop a rule requiring businesses with 100+ employees to ensure all employees are fully vaccinated or undergo regular testing
- Proposed rule currently under review by the White House

- **Executive Order 14042**

- Requires certain federal contractors and subcontractors to mandate vaccinations against COVID-19 for covered employees

# Potentially Required Accommodations

- Federal vaccination mandates may be overridden by religious and disability accommodation requirements under federal/state law
  - Temporary or permanent reprieves from vaccination mandate may be necessary due to disability/medical conditions or sincerely held religious beliefs.
- Employers introducing a COVID-19 vaccination policy and requiring documentation or other confirmation of vaccination should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis.
- Undue hardship may limit the need to provide accommodation.
- Accommodations to be judged on a case-by-case basis.

# Title VII's Religious Accommodations Requirement

- EEOC advises to generally assume a request for religious accommodation is based on sincerely-held religious belief.
- Prior inconsistent conduct may not be sufficient to challenge the sincerity of an employee's belief since people may change their beliefs over time.
- If employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information.

# COVID-19 Testing/Proof of Vaccination

- Virginia law permits self-certification of vaccination status.
  - Unclear whether this will be permitted under OSHA rule for large employers.
- Virginia law requires that employers pay for the costs of testing, if required as a condition of employment.
- Either PCR or Rapid (Antigen) testing is acceptable. Just not antibody testing.
- Testing/vaccination records, if retained by employer, must be kept confidential and stored separately from personnel file.

# Questions?