



# NATIONAL FRATERNAL ORDER OF POLICE

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## **POLICY STATEMENT: COVID-19 Vaccines**

13 September 2021

*The National FOP will take every step and use every available approach to protect our members and their rights as these issues develop. We are prepared to bring to bear all of our resources—legislative, legal and others—in this effort.*

*It is the position of the National FOP that vaccinations work to prevent people from becoming infected by or transmitting COVID-19. However, the National FOP asserts that whether or not to accept the vaccine is a personal decision that our members should make for themselves after consultation with their doctor or other medical professionals. We will continue to be engaged with the Administration, Governors, and other elected leaders on these matters as vaccine and testing policies are implemented at every level of government.*

*The National FOP takes our responsibilities to protect and inform our members about their rights very seriously, and we will be working diligently to ensure that while you protect the public, the FOP will protect YOU.*

### **Executive Orders and Actions Expanding COVID-19 Vaccination Requirements**

On 10 September 2021, President Joseph R. Biden, Jr. issued two new Executive Orders. The first requires all Federal agencies to implement programs requiring all executive branch employees to receive the COVID-19 vaccination, subject to exceptions required by law.

In seven days, the Safer Federal Workforce Task Force (Task Force) will issue guidance to all Federal agencies “on implementation of this requirement.”

The second Executive Order requires that all Federal contractors and subcontractors be required to receive the COVID-19 vaccination, subject to exceptions required by law. The Task Force will issue guidance to all Federal agencies to ensure that any and all contract or contract-like instruments with components of the Federal government have a clause requiring vaccination.

President Biden took additional steps to use the regulatory powers of the Federal government and other executive actions to “substantially increase the number of Americans covered by vaccination requirements” to provide that such requirements “become dominant in the workplace.”

These steps are as follows:

- The Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor is developing a rule that would require all employers with 100 or more employees to ensure their employees are “fully vaccinated” or that the employee produce a negative test result on “at least a weekly basis” before reporting for work. The OSHA will issue an Emergency Temporary Standard to implement this requirement. It is estimated this will impact approximately 80 million employees. The rule will also require that employers provide employees with paid time off to comply with the new requirements.
- The Centers for Medicare and Medicaid will take action to require COVID-19 vaccinations “for workers in most health care settings that receive Medicare or Medicaid reimbursements.” It is expected that these requirements will apply to approximately 50,000 providers and cover a majority of health care workers.
- The President called on “large entertainment venues” to require that patrons and attendees be required to be vaccinated or show a recent negative test or be denied admittance to the venue.
- The Administration is preparing to offer “booster shots” to those who are already vaccinated, subject to approval from the Food and Drug Administration (FDA) and recommendations by the independent Advisory Committee on Immunization Practices (ACIP) within the Centers for Disease Control and Prevention (CDC). These boosters will be “easy” to get at more than 80,000 locations and may be available as soon as 20 September.
- The President urged the parents of all children aged 12 and above to ensure that their child is vaccinated against COVID-19. The FDA is working to evaluate the possibility of a vaccine for children younger than 12 years of age and the Administration is providing support for this endeavor.
- The U.S. Department of Health and Human Services (HHS) will initiate a rulemaking to require teachers and other staff at Head Start, Early Head Start, and similar Federal education and youth programs across the Federal government to be vaccinated against COVID-19.
- The President urged States to adopt vaccine requirements for all school employees. The U.S. Department of Education (DoEd) will make funding available to any school that has adopted a vaccination requirement or CDC-recommended prevention strategy and, as a consequence, lost access to State funding.
- The DoEd will also take action and investigate States that have prohibited mask mandates in schools.
- The HHS is calling for all schools to implement regular testing for students, teachers, and staff consistent with CDC recommendations.
- Using the authorities of the Defense Production Act and the acquisition of \$2 billion in rapid tests and at-home tests, the Administration will work to ensure a broad industrial capacity for test production. With an agreement between the Federal government, Walmart, Amazon and Kroger, at-home tests will be available to all Americans at cost for the next three months. Free tests will be

made available to community health centers and food banks and the number of retail pharmacies providing free testing will be expanded.

- The Executive Order requiring masks to be worn on most public transportation has been extended to 18 January 2022 and fines for noncompliance have been doubled. Mask requirements remain in place on all Federal property.
- The Small Business Administration (SBA) will increase the maximum amount of funding that can be borrowed from \$500,000 to \$2 million. The COVID Economic Injury Disaster Loan (EIDL) program will be strengthened with this increase.
- The Administration is establishing a forgiveness program for those businesses that borrowed from the Paycheck Protection Program (PPP).
- The SBA will be selecting Community Navigators, as established in the American Recovery Act, in underserved communities by the fall.
- The U.S. Department of Defense has committed to doubling the number of its COVID-19 Surge Response teams, which will be deployed to areas of the country hardest hit by the Delta variant of COVID-19.
- The Federal government will accelerate and increase the number of free monoclonal antibody treatments. The Federal government will also expand its in-person technical assistance and virtual training for medical health professions to provide this treatment.

## **POLICY QUESTIONS**

We expect there to be multiple lawsuits challenging both the Executive Orders and other executive actions.

At this stage, the implementation of the mandate is unclear, though the Administration has stated it expects all employees to be vaccinated in “about 75 days.”

We have no definitive information about how the mandate will be enforced but anticipate it will be done on an agency-by-agency basis. It is not clear what kind of due process protections will be put into place for employees who do not comply with the mandate.

There is not yet any established process or protocol for employees who claim they should be exempt from the vaccine requirements for health, religious or other reasons, nor is there any process or protocol in place to handle appeals for decisions on exemptions.

There is not yet any record-keeping process or protocol to accept or certify an employee’s vaccination status.

The Task Force is expected to address some of these issues when it issues its guidance in the next week or two.

## VACCINE MANDATES IN STATES AND LOCAL AGENCIES

Across the country, State and local governments and some individual agencies are putting in vaccine mandates, enhanced testing protocols, and mask requirements for their employees.

While State and local laws vary, here is what you need to know:

- Public employers can mandate employees to be vaccinated against COVID-19 and its variants as long as they accommodate employees with medical conditions or religious beliefs against receiving the vaccination.
- It is likely, however, that the imposition of such a mandate must be subject to mandatory bargaining if the employees have a contract or collective bargaining agreement in place, as it represents a change in working conditions—especially if there are disciplinary considerations. Any changes in workplace conditions—vaccine mandates, testing, mask-wearing policies—should be subject to bargaining. ***This issue is in active litigation.***
- Public employers can mandate that employees who decline the vaccine be tested for COVID-19. The employer can determine the frequency of such tests and who incurs the cost of the test. The Federal government is working to expand the availability of at-home tests and free testing at local pharmacies. It should also be noted that the OSHA guidelines to expand vaccination rates in the private sector will require employers to give employees paid time off to comply.
- If a public employee has an adverse reaction due to a mandated vaccination shot, the employee should have recourse through the workman's compensation program.
- Public employers that require employees to disclose their vaccination status ***must*** keep this information and records completely private, just like any other medical information. The same applies to any COVID-19 test.