

What the Biden COVID plan means for employers



As we move closer to January 20, 2021, the Biden COVID plan is coming into focus. So is what the effort means for employers. Announced on December 8, the three-part plan focuses on getting America back to work and school. The new administration aims to control the spread, vaccinate Americans and get kids back in school – all in 100 days. Here are the basic plan elements and how they will impact how you run your organization.

Control the spread

President-elect Biden has long advocated a national mask mandate and the Biden COVID plan is likely to include stronger rules around masks. The federal government, however, has limited jurisdiction to impose such a move. Federal buildings and all forms of interstate travel would fall under the mandate. Employees who traveled on planes, trains, or busses would have to wear masks while traveling.

Employers who have employees using public transportation should remind those employees about the mandate. That's especially critical when traveling on company business. Like following traffic and other rules, employees should be expected to follow these mandates too.

States and cities would still have the most impact on how employers navigate the pandemic. State and local officials would have the same powers to regulate business openings and mandate masks. Biden will likely pressure governors and mayors to adhere to Centers for Disease Control (CDC) guidelines for closures.

OSHA Emergency Temporary Standard

The Biden campaign supported a COVID Emergency Temporary Standard (ETS) for the Occupational Safety and Health Administration (OSHA). The move would impose fines on employers who failed to maintain COVID-related health and safety standards. Labor groups have supported the move. The AFL-CIO unsuccessfully sued the Trump Administration in an attempt to force its implementation. Business groups have countered the move does not allow employers enough flexibility. Under the Trump Administration, OSHA recommended employers follow CDC guidelines but issued very few citations.

Should OSHA issue an ETS, businesses could face fines for failing to follow the standard. The ETS would give CDC recommendations some teeth. Employers should examine the most recent CDC guidelines to determine where workplace practices may need adjusting. But fair warning – some states' OSHA-equivalent agencies have put in place tighter regulations or industry-specific rules. These will still apply.

Employers' role

The success of the Biden COVID plan requires employer and employee buy-in. Employers can start by educating workers and other stakeholders (such as customers and clients) about the plan. Employers can also make sure they follow all relevant guidelines. That includes screening employees for COVID-19 within legal limitations. The Americans With Disabilities Act (ADA) [generally prohibits employers from making medical inquiries of employees](#). The ADA's "direct threat" safe harbor allows employers to make medical inquiries under limited circumstances. For example, employers who wished to take employees' temperature upon entry during the pandemic could do so. Similarly, employers could ask employees if they had experienced any COVID symptoms or had traveled to COVID hotspots. They can also urge strict adherence to preventative measures, including wearing face coverings, hand washing, and social distancing.

The Biden COVID plan will focus on vaccinating the public

President-elect Biden has promised 100 million vaccines in the first 100 days of his administration. The first vaccines left warehouses this week. Each state has established priorities regarding who goes to the head of the line. Generally, health care professionals working directly with COVID patients and institutional residents are first in line. Essential workers, those with underlying health conditions, and people of color are in the next tier.

How workers are prioritized varies from state to state. Essential workers head the list. Any employee who had to come into work during the pandemic could be considered an essential worker. Workers needed to keep critical infrastructure running would also qualify. So would cashiers, cleaning crews, day care teachers, stockroom clerks, bus drivers and anybody else who had to show up.

Employer immunization education and plans

Employers who want to require or encourage immunization may need to inquire about an employee's health. But employees should not be asked directly. Doing so may violate the ADA. Instead, educate workers about who is eligible for vaccine priority as you plan a vaccination schedule. You can, for example, announce that workers with pre-existing risk factors are eligible for immunization. Then list those conditions and urge employees to self-identify if they wish to immunize. Employers may provide information such as CDC guidance and local availability of vaccines. As always, consult with counsel on the wording of any information circulated to employees.

The CDC lists [risk factors](#) on its website. They include:

- Cancer
- Chronic kidney disease

- COPD (chronic obstructive pulmonary disease)
- Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 kg/m² or higher but < 40 kg/m²)
- Severe Obesity (BMI ≥ 40 kg/m²)
- Pregnancy
- Sickle cell disease
- Smoking
- Type 2 diabetes mellitus

Open Schools

In an effort to reopen schools, many states are giving high vaccination priority to schoolteachers and school employees. The Biden COVID plan also called for funds to help schools reopen. Of course, those funds would have to be approved by Congress.

School openings may roll out unevenly. In addition to vaccinating staff, schools will have to ensure buildings are safe following extended closure.

Childcare centers may be slower to open. Although many have remained in operation, they have done so at far reduced capacity. Bringing back more children may take considerable time as cases fall and staff is vaccinated. Depending on the state, childcare workers may not have the same vaccination priority as teachers.

Employer's role in schools

Opening schools and daycare centers will have a big impact on employers. Parents will have an easier time whether working at home or showing up at work. But employers should also expect that there will be continued school shutdowns throughout 2021. Here's why. After opening, some schools may have to revert to distance learning if COVID cases hit teachers or students. A classroom infection may send those students home to isolate or remote educate for a week or more. Whole districts may be hit hard and close temporarily. As a result, expect more periodic requests for leave.

National paid leave for school and daycare closures are set to expire on December 31 unless Congress extends the law. But employers may want to exercise discretion and approve short COVID-related leave requests. They should also be aware that many states and cities have their own mandatory paid leave laws.

Biden's COVID plan may include more Stimulus legislation

Talks continue between the Trump White House and the current Congress about a new stimulus package. Biden has called for immediate stimulus and will push forward in January. Employers should stay tuned for any announcements. Here are the major COVID-related relief provisions being discussed.

- Extending paid leave related to COVID under the Families First Coronavirus Response Act (FFCRA)
- Extending unemployment compensation benefits past its end-of-year expiration and adding an additional weekly benefit.
- Providing limited employer liability protection for workplace-related COVID infections.
- Giving more direct aid in the form of grants and loans for struggling small businesses.
- Providing aid to schools

There is no guarantee this Congress will do anything. The new Congress convenes January 3 with a smaller Democratic majority in the House of Representatives. In the Senate, Republicans hold a 50-48 advantage pending the January 5, 2021 Georgia runoff election. Both sides may be posturing until the result is known.

Developing a timetable

Producing and distributing the COVID vaccines will be a colossal logistical operation. The general population will not see vaccines in significant numbers until the middle of the year. Employers should broadly assume their high priority employees will be vaccinated by the end of the first quarter of 2021. Despite the new administration's 100-day pledge, most experts do not see widespread vaccine distribution until midway through 2021.

Employers should monitor local conditions as well as national developments. There no doubt will be bright spots and setbacks. The need for mask-wearing and social distancing may persist beyond mass vaccination.

Additional Resource: Also consider how [Workers' rights in the age of COVID](#) may impact your business.