



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Will Biden Vax Mandates Prompt Run On Employment Attys?

By **Aebra Coe**

Law360 (September 24, 2021, 2:43 PM EDT) -- Already busy labor and employment lawyers are bracing for another influx of work as the Biden administration plans widespread employer vaccine and testing mandates.

Employment leaders and legal recruiters say there's no question: The boost in labor and employment work that began early in the pandemic will be intensified by the news from the White House this month. Corporations, faced with an ever-shifting regulatory and workplace safety landscape, will continue to tap their outside counsel for advice navigating the new requirements, they say.

"Most experts agree the pandemic is not going anywhere for at least six months," said Ken Young, a longtime BigLaw employment leader who is now a legal recruiter at Young Mayden Legal Search.

"Will the vaccine mandate and other factors related to the pandemic provide extra work for employment lawyers at big firms and employment boutiques? The answer is definitely yes," Young said. "We know this will increase billable hours and possibly profits because this is such a multiheaded monster from a legal standpoint."

Will the extra work lead to a major increase in hiring? Experts are less sure on that front, but they say it is possible.

Labor and Employment Teams Are 'Swamped'

Not many details on the new federal mandate have been released, or even decided on.

[W]e see this as yet one more iteration of a tidal wave of changes to a legal framework that employers are managing.



Laura Maechtlen

Seyfarth Shaw

The Biden administration this month directed the Occupational Safety and Health Administration, the agency under the purview of the U.S. Department of Labor in charge of creating workplace policies, to require employers with 100 or more workers to ensure they are vaccinated or tested weekly.

The agency is expected to formalize the mandate in the coming weeks, issuing a directive called an emergency temporary standard, with specifics on how it will be applied.

The legal issues swirling around the mandate include proper implementation of internal programs to monitor who has been vaccinated and who hasn't, as well as weekly testing where relevant, all while complying with OSHA standards, privacy laws and wage and hour laws.

And then there is the possibility that employees claim they are exempt from the new mandate based on religious or health reasons. That brings in further legal review under the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 with regard to religious freedom.

And it seems state attorneys general could bring litigation against the federal government over the new rule, focusing on issues such as states' rights and what role they play in workplace health and safety regulation.

"President Biden's decision is prompting current clients and others to call us with questions related to regulatory standards, mandatory vaccines and exemptions," said Donna Pryor, an employment partner and OSHA expert at Husch Blackwell LLP. "We expect that client counseling on this issue will continue before and after the regulations are issued as recent history has shown that even after the legal guideposts are set, questions remain as to both the legal and practical application."

According to Seyfarth Shaw LLP national labor and employment chair Laura Maechtlen, the Biden

vaccine mandate has caused a flurry of activity for her clients and teams as well.

Just when we thought it was safe, the new Biden announcement blew everything up.



Courtney Malveaux

Jackson Lewis

"Given the intense focus by global employers through 2020 and 2021 on so many issues related to COVID, we see this as yet one more iteration of a tidal wave of changes to a legal framework that employers are managing," Maechtlen said.

Courtney Malveaux, co-leader of Jackson Lewis PC's workplace safety and health practice group, says he and his team have been "swamped with calls" asking for their advice since March of last year.

There have been differing and even contradictory local, state and federal rules and guidance around workplace safety as the pandemic has wreaked havoc across the country, and attorneys have sifted through those regulations to make sense of them for clients.

"Just when we thought it was safe, the new Biden announcement blew everything up," he said.

Malveaux says he doesn't have a point of reference in his career to compare this past year to.

"Not even close. I remember when a standard would come out and it became big news," he said. "Now we're getting hit with multiple new emergency standards without meaningful notice. The Biden announcement came out and it was the trifecta of announcements and had everyone scratching their heads."

Are Labor and Employment Leaders Scrambling To Hire?

According to Malveaux, his team isn't actively staffing up, but the attorneys have been working "around the clock" to get answers to clients. The same is true at some other large law firms.

Husch Blackwell's Pryor says her team is incredibly busy, but she doesn't anticipate needing to do a ton of hiring to meet clients' needs.

"We are definitely seeing an increase in questions from clients for whom we have not previously provided labor and employment counseling services. However, counseling clients on regulatory compliance is standard practice in our labor and employment group," she said. "We do not anticipate additional hiring needs due to the mandate."

Seyfarth's Maechtlen says her firm has been actively hiring experienced labor and employment attorneys across the globe for some time, and that will continue. But the Biden announcement probably won't have a huge impact on the firm's hiring, she said.

They would rather people who would otherwise bill 1,800 hours bill 2,000 hours



Ken Young

Young Maiden Legal Search

"While we are seeing a massive amount of work in this area, from individual questions to systemic management challenges, Seyfarth is lucky to have both breadth and depth," she said.

Bonnie Kristan, managing shareholder of Littler Mendelson PC's Cleveland office, says she has seen an uptick in movement among labor and employment attorneys more generally in recent months.

"Combining the facts that the practice area is very busy and some attorneys are leaving for new opportunities, the job market for firm positions is hot," she said. "It's often a job seeker's market on the coasts where talented attorneys have many options, but now we're seeing it in the Midwest as well."

Young of Young Maiden Legal Search predicts law firms with weaker labor and employment groups will be looking to strengthen those teams as the already busy practice area gets even busier.

The employment boutiques already have big teams, but it's the firms that don't have those robust employment departments that are looking right now, he said.

Still, even they are not hiring a bunch of new associates, according to Young.

"They would rather people who would otherwise bill 1,800 hours bill 2,000 hours," he said. "The pandemic does rise and ebb with the seasons, vaccines, and other factors. Most firms are pretty cautious about overhiring right now."

--Additional reporting by Marco Poggio. Editing by Orlando Lorenzo and Alyssa Miller.