

CUT AND PASTE POST JANUARY, 2022

Build Back Better Act (BBBA) Update



The December 2021 *Cut N Paste Post* described the possible impacts of the \$1.75 trillion BBBA on HR management. This Bill hit a wall later in December when Sen. Joe Manchin said he would oppose it. While a new, pared down version may be forthcoming, none of the provisions described in last month's *Cut N Paste* are expected to be included in a new bill. So, good news for HR professionals: you can take a deep breath, and rely on GVHRA to keep you updated.

Starts and Stops: Vaccine Mandates

In November, the Biden administration issued vaccine mandates covering:

- Federal contractors
- Health care facilities
- Employers with at least 100 employees

While the mandates vary a bit, they generally require employers to set a deadline for employees to become fully trained and vaccinated against COVID, and to subject non-vaccinated employees to weekly testing and other safety measures. The status of these mandates in the Courts changes constantly, but here is a summary of these mandates as of January 5, 2022 at 9:09 p.m.!

Federal Contractors

A September 9, 2021, Executive Order mandated that all employees of covered federal contractors and subcontractors be fully vaccinated by December 8, 2021. Because of court challenges, the “fully vaccinated” deadline has been extended to January 18, 2022.

Professional Pointer: The best resource for federal contractors who need to comply with this mandate is the [Federal Safer Workforce Website](#).

Health Care Facilities

On November 3, 2021, the Centers for Medicare and Medicaid Services (CMS) issued a Rule which required health care workers to become fully vaccinated, and required Medicare/Medicaid providers and suppliers (e.g., nursing facilities, hospitals, dialysis facilities) to adopt vaccination policies/procedures. The compliance deadline (for full vaccinations) was January 4, 2022.

Inside

- “Build Back Better” Update
- Starts and Stops: Vaccine Mandates as of January 5, 2022

In late November, the U.S. District Courts for the Eastern District of Missouri and Western District of Louisiana issued preliminary injunctions enjoining implementation and enforcement of the Rule nationwide. In response, on December 2, 2021, CMS issued a memorandum to state survey agencies indicating it would not enforce this Mandate while there are court-ordered injunctions against the Rule in place. So, for the present time in Montana, CMS will not enforce the mandate. While the 12/2/21 memorandum says health care facilities may voluntarily comply with the rule, because of Montana’s HB-702, this statement may not be true in Montana.

Professional Pointer: Compliance resources for this Mandate can be found on the CMC’s webpage, [Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination](#)

Employers with at least 100 employees

In November 2021, the Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard (ETS) which applies to all OSHA–covered employers with at least 100 employees. Currently, the ETS requires covered employers to ensure all unvaccinated employees working in person to begin wearing masks by January 10, 2022, and for unvaccinated workers to provide a negative COVID-19 test on a weekly basis beginning February 9, 2022. (OTC COVID screening tests are allowed, but they cannot be both administered and interpreted by the same person.) The ETS also requires employers to exercise “reasonable, good faith efforts” to come into compliance with the ETS.

To avoid compliance confusion, President Biden has stated that OSHA’s ETS will only apply to employers with at least 100 employees who are not covered by the Federal Contractor or CMS mandates.

Here’s a couple great resources for complying with the ETS:

- SHRM Article: [How to Comply with OSHA Covid-19 ETS](#)
- OSHA: [COVID-19 ETS Webpage](#)

But, Wait, it’s not that easy

Last week, the U.S. Supreme Court agreed to hear legal challenges related to the mandate covering healthcare facilities and the OSHA ETS. The Court stayed these mandates until oral arguments can be heard, which is currently scheduled for Friday January 7th. It’s expected the Court will expedite the decision, so stay tuned.



So, what should you do?

The “legal beagles” tell us that, at least to this point, the Supreme Court has generally upheld vaccine mandates and that, in general, federal law supersedes state law. Therefore, it’s likely that at least one of the mandates in question will eventually take effect, *and* will apply to employers in Montana. HR professionals would be well served by identifying which (if any) of these mandate(s) will apply to their organizations, and begin taking the steps necessary to allow full compliance within a relatively short period of time (e.g., 2 months.) That way, when a mandate is upheld, you will be able to hit the ground running on your compliance efforts.



HAPPY NEW YEAR FROM YOUR GVHRA BOARD!!!

