

Washington, D.C. Update: COVID and Policy Developments

Prepared by
The Franklin Partnership, LLC
Policy Resolution Group at Bracewell
October 22, 2021



Your Team in Washington, D.C.



Lobbying Firm – The Franklin Partnership, LLC

- Bi-partisan Washington, D.C.-based government relations firm
- Representing manufacturing industry since 2002
- Clients include: manufacturing associations, defense contractors, hospitals, cities



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- Support Franklin Partnership government relations efforts by designing and implementing coordinated strategic communications strategy
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Nothing contained in here shall be deemed legal or financial advice.

Contents

- Federal Agency Actions
- Infrastructure and Reconciliation
- Tax Provisions
- Steel, Aluminum Tariffs
- China Tariffs

All information presented as of October 22, 2021

OSHA, IRS and Other Agency Actions

WHOM DO YOU TRUST?

2020 EDELMAN TRUST BAROMETER

The big picture: Diminishing trust in traditional societal leaders, like the government and traditional media, has generally forced people to turn to their employers more often for trusted information.

Details: In most countries surveyed, including the U.S., people are more likely to believe that their employers are seen as better prepared than their countries to handle the outbreak, per the survey.

Coalition Met with OSHA on Mandate; Mtgs Continue

View EO 12866 Meeting 1218-AD42

Title: COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking

Agency/Subagency: 1218-DOL/OSHA

Stage of Rulemaking: Final Rule Stage

Meeting Date/Time: 10/18/2021 04:30 PM

Requestor: Coalition for Workplace Safety **Requestor's Name:** Jennifer Ortega

Number Of Records Found: 68

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Meeting Date/Time	AGENCY	Rule Title	Stage of Rulemaking	Meeting Type
10/22/2021 02:30 PM	1218-DOL/OSHA	COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking	Final Rule Stage	Scheduled
10/22/2021 01:30 PM	1218-DOL/OSHA	COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking	Final Rule Stage	Scheduled
10/22/2021 01:00 PM	1218-DOL/OSHA	COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking	Final Rule Stage	Scheduled
10/22/2021 09:30 AM	1218-DOL/OSHA	COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking	Final Rule Stage	Scheduled

OSHA Employer Vaccine Mandate

- OSHA expected to release 100+ workers employer vaccine mandate in days
- Lawsuits expected; Political challenges and those from Employers/Employees
- Some employee lawsuits may seek to expand below 100 employees
- States with a “State OSHA plan” could lower employee threshold to 50 or lower
- Many OEMs, Tier 1s increasingly asking supplier vaccination status; prevent disruptions
- Government contractor/subcontractor vaccines required by Dec. 8
- Does not apply to contractors only supplying goods at this time
- Agencies “strongly encouraged” to apply Order to manufactured products contracts
- Coalition for Workplace Safety, attorneys reviewing options

Government Contractor Vaccination Requirements

Safer Federal Workforce Task Force

COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors

Issued September 24, 2021

Q13: Must the order's requirements be flowed down to all lower-tier subcontractors and, if so, who is responsible for flowing the clause down?

A: Yes. The requirements in the order apply to subcontractors at all tiers, except for subcontracts solely for the provision of products. The prime contractor must flow the clause down to first-tier subcontractors; higher-tier subcontractors must flow the clause down to the next lower-tier subcontractor, to the point at which subcontract requirements are solely for the provision of products.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products.

Actions for Federal Contractors to Take Now

- Carefully study what federal contracts you have and when expiration, renewal or extensions may occur
- Carefully scrutinize new federal contracts or other federal contract instruments
- Confer with legal counsel about complex rules related to coverage
- Remember there is no testing alternative in this case to the vaccination requirement if you are covered
- Recognize that if you have any federal contracts you should be conducting your careful analysis now and not waiting until later

BRACEWELL

CDC: Employer Vaccination Programs

Workplace Vaccination Program

Updated Oct. 15, 2021 Languages ▼ Print

On this Page

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[Build Confidence in COVID-19 Vaccines](#)

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[Vaccination Off Site in the Community](#)

[Other Considerations](#)

[Vaccine Mandates & Exemptions](#)

[Vaccinated Workers](#)

[Other Resources](#)

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html>

Consider COVID-19 Vaccination Options for Your Employees

Assess options for vaccinating your workforce. Options include:

- On site at the workplace
 - Existing occupational health clinics
 - Employer-run temporary vaccination clinics
 - Mobile vaccination clinics brought to the workplace
 - Hosting a local health department or pharmacy vaccination clinic
- Off site in the community
 - Mobile/temporary vaccination clinics set up at community locations (closed or open to the public)
 - Pharmacies enrolled in the [Federal Retail Pharmacy Program](#)
 - Hospitals and healthcare provider offices
 - Federally qualified health centers and other community clinics

Consider a workplace vaccination program if you have:

- A large number of workers on site with predictable schedules
- A large number of workers who are not vaccinated
- Workers with limited access to vaccination services, live in under-resourced communities, or experience disadvantage
- The ability to enroll with your jurisdiction's immunization program as a [vaccination provider](#), including appropriately [trained](#) staff, or to engage an enrolled vaccination provider
- A location with enough space to stand up a vaccination clinic while maintaining physical distancing through the entire process, from screening to post-vaccination observation. See [CDC's guidance for temporary vaccination clinics](#) for more detail.

Consider off site vaccination if you:

- Are a small- or medium-sized organization that does not have the resources to host a vaccination clinic
- Have a large number of workers who have already been vaccinated
- Have mobile worker populations that frequently move from one job site to the next
- Have workers with highly variable schedules
- Have a majority of workers who would prefer vaccination in a community clinic rather than an employer-run clinic

Implementing COVID-19 Vaccination in Your Community?

Resources are available to help employers. The National Forum on COVID-19 Vaccine has shared a variety of materials and resources to help provide COVID-19 vaccine equitably, effectively, and quickly to as many people as possible in communities across the country.

[More](#)

CDC & EEOC – Two Types of Exemptions

Two types of exemptions can be implemented:

Medical exemptions

Some people may be at risk for an adverse reaction because of an allergy to one of the vaccine components or a medical condition. This is referred to as a medical exemption.

Religious exemptions

Some people may decline vaccination because of a sincerely held religious belief. This is referred to as a religious exemption.

Employers offering vaccination to workers should keep a record of the offer to vaccinate and the employee's decision to [accept or decline vaccination](#).

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html>

13. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza or COVID-19 vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than de minimis cost" to the operation of the employer's business, which is a lower standard than under the ADA).⁽³⁶⁾

Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.

it. <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>



CDC Testing Guidance Updated – Unvaccinated Employees

Interim Guidance for SARS-CoV-2 Testing in Non-Healthcare Workplaces

Updated Oct. 7, 2021 Languages ▼ Print

Summary of Recent Changes

Updates as of October 6, 2021

- Updated descriptions of test types.
- Updated to align with new antigen testing algorithms, one for [community settings](#)  and one for [congregate settings](#) .
- Updated testing recommendations for [fully vaccinated](#) workers who are close contacts of someone with COVID-19.
- Clarified that screening testing recommendations apply to asymptomatic, unvaccinated workers.

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/testing-non-healthcare-workplaces.html>

CDC Testing Guidance Updated

Overview of testing scenarios

Diagnostic testing is intended to identify current infection in individuals and is performed when a person has signs or symptoms consistent with COVID-19 or when a person is asymptomatic but has a recent known or suspected exposure to SARS-CoV-2.

Examples of diagnostic testing include:

- Testing people who have [symptoms](#) consistent with COVID-19 and who present to their healthcare provider
- Testing people as a result of contact tracing efforts
- Testing people who indicate that they were exposed to someone with a confirmed or suspected case of COVID-19.
- Testing people who attended an event where another attendee was later confirmed to have COVID-19

Screening tests are intended to identify infected people who are asymptomatic and do not have known, suspected, or reported exposure to SARS-CoV-2. Screening helps to identify unknown cases so that measures can be taken to prevent further transmission.

Examples of screening testing include:

- Testing unvaccinated employees in a workplace setting
- Testing unvaccinated students, faculty, and staff in a [K-12 school](#) or [institute of higher education](#) setting
- Testing an unvaccinated person before or after [travel](#)
- Testing at [home](#) for someone who does not have symptoms associated with COVID-19 and no known exposures to someone with COVID-19

CDC Guidance – Types of Tests: PCR vs Antigen (not antibody)

Table 1. NAAT and Antigen Test Differences to Consider When Planning for Diagnostic or Screening Use

	NAATs	Antigen Tests
Intended Use	Detect <i>current</i> infection	Detect <i>current</i> infection
Analyte Detected	Viral Ribonucleic Acid (RNA)	Viral Antigens
Specimen Type(s)	Nasal, Nasopharyngeal, Oropharyngeal, Sputum, Saliva	Nasal, Nasopharyngeal
Sensitivity	Varies by test, but generally high for laboratory-based tests and moderate-to-high for POC tests	Varies depending on the course of infection, but generally moderate-to-high at times of peak viral load*
Specificity	High	High
Test Complexity	Varies by test	Relatively easy to use
Authorized for Use at the Point-of-Care	Most are not, some are	Most are, some are not

Turnaround Time	Most 1-3 days. Some could be rapid in 15 minutes	Ranges from 15 minutes to 30 minutes
Cost/Test^	Moderate (~\$75-\$100/test)	Low (~\$5-\$50/test)
Advantages	<p>Most sensitive test method available</p> <p>Short turnaround time for NAAT POC tests, but few available</p> <p>Usually does not need to be repeated to confirm results</p>	<p>Short turnaround time (approximately 15 minutes)*</p> <p>When performed at or near POC, allows for rapid identification of infected people, thus preventing further virus transmission in the community, workplace, etc.</p> <p>Comparable performance to NAATs in symptomatic persons and/or if culturable virus present, when the person is presumed to be infectious</p>
Disadvantages	<p>Longer turnaround time for lab-based tests (1-3 days)</p> <p>Higher cost per test</p> <p>A positive NAAT diagnostic test should not be repeated within 90 days, because people may continue to have detectable RNA after risk of transmission has passed</p>	<p>May need <u>confirmatory testing</u></p> <p>Less sensitive (more false negative results) compared to NAATs, especially among asymptomatic people</p>

CDC Website With All Main Employer Links Together

Workplace Prevention Strategies

To prevent and reduce transmission and maintain healthy business operations and work environments

[Workplace Vaccination Program](#)

[Types of Masks and Respirators](#)

[Ventilation in Buildings](#)

[Testing in Non-Healthcare Workplaces](#)

[Case Investigation and Contact Tracing](#)

[Cleaning and Disinfecting](#)

[Post-vaccination Considerations for Workplaces](#)

[Additional COVID-19 Information for the Workplace](#)



COVID-19 County Check

[< Start Over](#)

● Substantial Transmission

In District of Columbia, District of Columbia, community transmission is Substantial Transmission.

Everyone should wear a mask in public indoor settings.

Mask requirements might vary from place to place. Make sure you follow local laws, rules, regulations or guidance.

October 22, 2021

<https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html>

IRS Clarifies Specific R&D Refund Information Included

IRS sets forth required information for a valid research credit claim for refund

WASHINGTON — The IRS has set forth the information that taxpayers will be required to include for a research credit claim for refund to be considered valid. Existing Treasury Regulations require that for a refund claim to be valid, it must set forth sufficient facts to apprise IRS of the basis of the claim. The [Chief Counsel memorandum](#) [PDF](#) will be used to improve tax administration with clearer instructions for eligible taxpayers to claim the credit while reducing the number of disputes over such claims.

Specifically, the opinion provides that for a Section 41 research credit claim for refund to be considered a valid claim, taxpayers are required to provide the following information at the time the refund claim is filed with the IRS:

- Identify all the business components to which the Section 41 research credit claim relates for that year.
- For each business component, identify all research activities performed and name the individuals who performed each research activity, as well as the information each individual sought to discover.
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year. This may be done using [Form 6765, Credit for Increasing Research Activities](#) [PDF](#).

<https://www.irs.gov/newsroom/irs-sets-forth-required-information-for-a-valid-research-credit-claim-for-refund>

Infrastructure Investment and Reconciliation Bills



Democrats Debating How Much to **\$pend** in Reconciliation

- Democratic Progressives will not allow infrastructure to move without reconciliation
- Democratic Moderates will not allow reconciliation to move without infrastructure



\$3.5 trillion



President Biden:
\$1.75-1.9 trillion



Sen. Manchin:
\$1.5 trillion



Speaker Pelosi:
\$2.1 trillion

Latest Rumors on Reconciliation Bill – What's In & Out

What's In, For Now...

- 4-weeks paid family and medical leave instead of 12-weeks for earners under \$100,000
- Extension of Child Tax Credit for only one year
- Increase in Pell Grant funding
- Additional dollars for apprenticeships, training programs targeting laid-off workers and youth

What's (Likely) Out...

- Expansion of Medicare to cover dental, hearing, and vision insurance (vouchers possible)
- Universal Pre-K without a means test
- Tuition free community college
- Clean Electricity Payment Program
- Affordable childcare

Latest Rumors on Taxes in Bill – What's On the Table

What's (Likely) Out...

- Increase in the C-Corporation rate to 26.5%
- Elimination of step-up basis for capital gains

What's Under Discussion...

- 15% minimum C-Corporation rate
- 15% global minimum tax on multinationals
- Some form of billionaire's, high wealth tax
- Mark-to-Market – tax capital gains, derivatives, carried interest taxed annually at ordinary income rates
- Taxing unrealized gains annually
- Possible increase in SALT limitation to \$15,000-25,000 or a two year suspension of limit
- Bank account reporting to IRS at \$10,000 threshold

What's Uncertain...

- Possible limitation on passthrough deductions for certain earners
- Estate tax reduction on January 1, 2022 instead of 2026

2021 TAX SURVEY RESULTS

ONE VOICE FOR MANUFACTURING TAX SURVEY

2021

According to our One Voice Survey, these are the most important tax credits/deductions used by our member companies.

- 1 Section 179**
- 2 100% Bonus Depreciation**
- 3 R&D Tax Credit**

- 4 Section 199A-
Qualified Business
Income Deduction
for Passthroughs**
- 5 Sections 163(j)
EBITDA- Business Loan
Interest Deduction**
- 6 State and Local Tax
Deduction**
- 7 Other**

More information available at onevoiceinfo.org



Possible Timelines for Coming Weeks

- Infrastructure Vote – Bipartisan bill likely stays intact, vote still tied to reconciliation
- Reconciliation Vote – Pelosi has 3 vote margin; Schumer 0 votes to spare
- Biden could announce a framework by Oct. 29
- Both bills remain linked – Many expect final votes Nov. 1-Dec. 22
- Federal debt ceiling – Democrats will likely have to use another reconciliation to raise limit
- Federal Government funding – Bipartisan extension or agreement likely by Christmas
- Tax Extenders Bill – Congress may still move a bipartisan year-end tax extenders bill
 - If R&D Tax Credit not included in reconciliation, likely moves in tax extenders

Tariffs and Trade

U.S.-EU Negotiating on 232 Steel, Aluminum Tariffs

- U.S. in discussions with European Union on 232 “solution” by November 1st
- EU will double tariffs on U.S. exports to 50% on December 1, 2021
- Solution does not mean lifting of tariffs, we expect some restrictions on imports
- Tariff Rate Quota (TRQ) under discussion – tariff rate rises once imports hit a certain level
- Groups lobbying to lift tariffs raising concern over TRQs, addressing Japan, South Korea
- EU may agree to Canada/Mexico type deal – surge monitoring system prior to tariffs
- USTR considering a process where tariffs recede as demand grows
- Bipartisan Senate bill to reform Section 232 National Security tariffs introduced

An infrastructure bill will increase demand for U.S. steel, aluminum supply...

Administration Completes 8-Month China Policy Review

- U.S. will work to enforce Phase I deal; not immediately pursue Phase II
- Largely maintaining status quo towards China
- May initiate another Section 301 case, this on one industrial subsidies instead of IP theft
- Do not expect Biden to lift tariffs on China ahead of Nov. 2022 elections
- U.S. hoping EU will step up and put more pressure on China
- Geopolitical issues loom large: Hong Kong, Taiwan, N. Korea, Afghanistan, Australia
- Chinese Communist Party meetings in 2022 to “re-elect” President Xi looms over talks



China Tariff Exclusions – Eligible Products

- USTR announced targeted exclusion process will run October 12 – December 1, 2021
- Largely focused on 549 exclusions that expired December 2020
- Significant lobbying effort to expand list beyond 549 Chinese imports
- USTR seeking input with a specific emphasis on impact to small businesses
- Ask again whether available in U.S. or third party country other than China
- USTR asking requesters what steps they've taken to buy domestic...

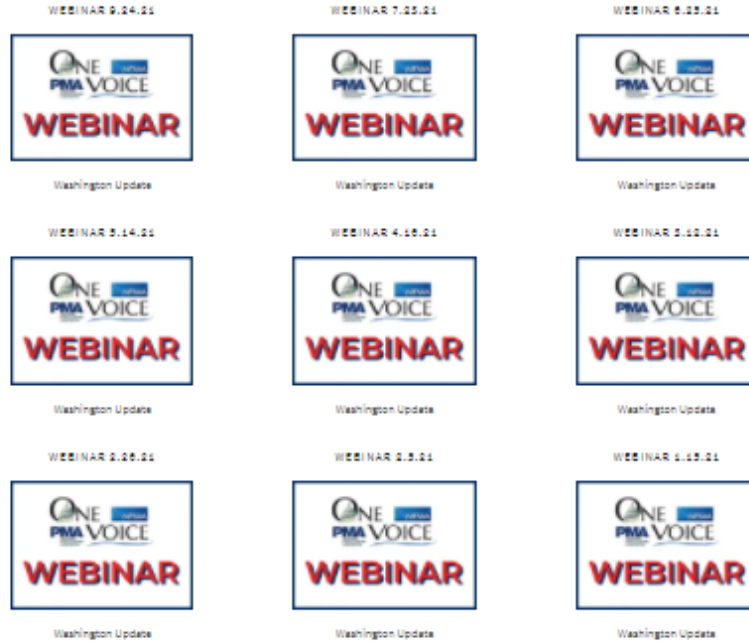
Whether you support or oppose reinstating the exclusion, please discuss any efforts you have undertaken since July 2018 to source this product from United States or third countries, or to produce domestically. (BCI)

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31 COVID and Policy Webinars Since March 2020

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2020 ONE VOICE WEBINARS



Questions?

The Franklin Partnership, LLC

Omar S. Nashashibi

Omar@franklinpartnership.com

Policy Resolution Group

Paul Nathanson

Paul.nathanson@bracewell.com

