

BUSINESS

Minnesota employers scramble in response to federal vaccine rules

New standard means more than 4,500 employers across the state will mandate immunizations or require weekly testing

By Christopher Snowbeck (<https://www.startribune.com/christopher-snowbeck/6370570/>) Star Tribune

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Thousands of Minnesota employers have just weeks to comply with federal rules calling on workers to undergo COVID-19 vaccination or get tested weekly to show they've not been infected with the pandemic virus.

The rules weren't a surprise, but Thursday's announcement set the timeline and specified that employers won't have to cover testing costs.

Companies with 100 or more employees must ensure all their workers are fully vaccinated by Jan. 4, at which point those who are not must wear masks and undergo weekly testing, the Occupational Safety and Health Administration (OSHA) announced.

Also on Thursday, the agency that runs the federal Medicare program announced separate vaccine mandate requirements, which don't include a testing option, for hospitals and long-term care providers that receive funding from federal health programs.

Businesses have hard decisions to make in the coming weeks, employment law attorneys say. They aren't exactly sure how the agency will decide when to impose penalties of nearly \$14,000 per violation, said Vicki Stute, a vice president with the Minnesota Chamber of Commerce.

"I think there's a number of companies that have concerns [and] believe that the emergency temporary standards will create additional economic uncertainty for their companies specifically as well as the economy as a whole," Stute said.

Last year, there were 4,796 employers in Minnesota with 100 or more workers, according to the state Department of Employment and Economic Development, that collectively account for more than 1.4 million Minnesotans.

Employers that already have high numbers of vaccinated workers might simply opt for mandating immunizations, rather than go through the administrative challenges with testing and creating a system for workers to report test results. Others with many vaccine-averse employees may find it necessary to allow testing rather than risk losing workers with a vaccination mandate in an already challenged labor market.

Some companies will be forced to act despite deep reluctance to get involved in personal health care decisions — a topic that has become highly politicized, as well.



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Jeff Smith, a registered nurse, administered a COVID-19 vaccine at the St. Louis County mobile vaccine clinic on May 5, 2021.

"It is causing a lot of heartburn," said Sara Sidwell, an employment law attorney with Maslon LLP in Minneapolis. "It's a fairly accelerated timeline and there are obviously administrative and operational challenges and costs associated with both options."

Separately, the Centers for Medicare and Medicaid Services (CMS) standards announced Thursday apply to about 38,000 people who work at 375 nursing facilities across the state and more than 127,000 employees at 140 hospitals represented by the Minnesota Hospital Association.

A trade group for long-term care providers in Minnesota sounded the alarm that the Medicare rules could drive out health care workers and exacerbate current shortages.

While OSHA's standards allow large employers to provide workers with a test-out option to avoid vaccination, that's not the case for facilities accepting payment from the government's Medicare and Medicaid health insurance programs, said Patti Cullen, the president and chief executive of Care Partners of Minnesota.

"Let's be clear — this is a potential powder keg with a short fuse," Cullen wrote in an email. "We may face a scenario where we don't have enough workers to serve the seniors in our settings. And despite our pleas for help, there are no concrete solutions — either at the State or Federal levels — to help us solve our unprecedented workforce crisis."

Minnesota has its own agency for worker safety that must adopt the OSHA standards announced Thursday or develop an equivalent set of rules. Employment law attorneys said they expect the state will follow the federal standard.

Workers can seek exemptions to vaccine mandates for medical and religious reasons.

In addition, the ETS requires employers to provide paid time to workers to get vaccinated and paid leave to recover from any side effects that keep employees from being able to work.

Once the OSHA rules are published Friday, covered employers will have 30 days to establish, implement and enforce all requirements except for testing rules that start early next year, said Jessica Roe, an employment defense attorney in Minneapolis

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