

BUSINESSES PREPARE AS WHITE HOUSE ISSUES VACCINE GUIDANCE FOR INTERNATIONAL AIR TRAVELERS ENTERING THE UNITED STATES

Insights
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The White House just issued a Presidential Proclamation laying out plans for the new vaccine requirements that will apply to noncitizens who enter the United States by air. The October 25 guidance provides further contours for businesses seeking to navigate [the changes that will come on November 8 as the United States ends its geographically based COVID-19 travel restrictions in favor of a vaccination-based approach](#). The Proclamation includes some items that were anticipated, but it also included some surprises, including provisions allowing certain unvaccinated individuals to enter the country subject to testing and a promise to get vaccinated. Lifting the current geographically based ban will be a relief to employers of foreign nationals seeking to enter the United States, as well as those in the hospitality industry seeking to welcome back overseas customers after almost two years of their being barred from traveling to the U.S. Here is what businesses should know in advance of the changes coming online.

Requirements for Noncitizen Air Travelers Entering the United States

As we knew, noncitizen air travelers entering the United States on or after November 8, 2021 will generally be required to provide proof of “full” vaccination against

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COVID-19. The Secretary of Health and Human Services (HHS), through the Director of the Centers for Disease Control and Prevention (CDC), will have the authority to implement and enforce the new requirements. This includes defining what the term “fully vaccinated” means, what form(s) of proof of vaccination will be required, and determining how exceptions to the new rules will be handled.

Exceptions for Some Unvaccinated Travelers

The Proclamation includes provisions addressing how unvaccinated people may still be allowed to enter the United States despite the general vaccination requirement. One of the most important exceptions of interest to employers is that “any noncitizen who is a citizen of a foreign country where the availability of COVID-19 vaccination is limited . . . and who seeks to enter the United States pursuant to a non-immigrant visa” may be admitted to the United States **despite being unvaccinated.**

“Limited” availability is defined as a country where less than 10% of the country’s total population has been fully vaccinated with any available COVID-19 vaccine, or otherwise determined by the Director of the CDC to qualify as countries where the availability of COVID-19 is limited. Unless the CDC decides that they are not required to do so for one of a list of reasons, such individuals must arrange to be vaccinated within 60 days after arrival. The Director of the CDC may also implement measures for these individuals, such as requiring pre-and post-COVID-19 testing; mask mandates, and quarantine requirements. Importantly, this provision does not allow the entry of unvaccinated travelers on B-1 (business) or B-2 (tourism) visas, unless they can meet one of the other exceptions in the Proclamation.

The Proclamation excludes from the vaccine requirement noncitizens “for whom accepted vaccination is medically contradicted,” noncitizen members of the US Armed Forces and their dependents, those seeking entry for humanitarian

reasons, and those unvaccinated individuals whose admission would be in the national interest as determined by the government. The CDC also has leeway to exempt from these requirements unvaccinated travelers whose “intended stay is sufficiently brief.” And while there is no religious exemption included in the Proclamation, the Director of the CDC has the general authority to determine cases where COVID-19 vaccination “is not warranted for the noncitizen.”

What About Children?

Since posting [our recent Insight on this topic](#), we have fielded many questions as to whether vaccine requirements would be applied to children traveling to the U.S. Not surprisingly, this Proclamation exempts noncitizens’ children “for whom, given their age, requiring vaccination would be inappropriate, as determined by the Director of the CDC.” The Proclamation defers to the CDC to set the COVID-19 vaccination cutoff age “taking into account global vaccine availability for individuals in that age group.” International travelers with children will no doubt be watching this issue closely, as will we.

Which Vaccines will be Accepted?

The proclamation does not include specifics as to which vaccines will be accepted under the new rules, but defers that determination to HHS and the CDC. In [our prior Insight](#), we reported that the CDC had already started notifying airlines that the following vaccines would be accepted beginning on November 8:
Moderna; Pfizer; Johnson & Johnson;
Oxford/Astrazenica AZD1222 vaccine;
Oxford/Astrozenica formulation of the Serum Institute of India’s Covishield; Sinopharm (Beijing)’s BBIBP-CorV; and the Sinovac CoronaVac vaccines. If this list changes, we will send out an update.

Next Steps

This Presidential Proclamation is good news for employers seeking to bring noncitizen employees to the U.S. on H-1B, L-1, and other employment-based visas. Employers should require noncitizen employees seeking to enter the US and visitors for business to get fully vaccinated with one of the vaccines listed above. For those future employees from countries where vaccines are still not readily available, employers should make sure that there is a plan in place to get those employees fully vaccinated within 60 days of arrival.

It is important to keep in mind that the countries from which noncitizens depart will also have their own Coronavirus protocols in place that may be more stringent than the United States'. And, there may be mandatory quarantine requirements in place upon the travelers' return. Those seeking to come to the United States should consult with their local governments and airlines to understand the requirements before booking travel.

We will monitor these developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#).