# Hiring Source

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## JOBS, JOBS, JOBS IN HOUSTON

**Houston lost 7,100 jobs in July, which was better than expected. The region typically loses 15,000 or more in the month, the losses associated with educators being away from campus during the summer break. This year, Houston shed 16,700 education jobs.**

Those losses were offset by gains in professional and business services (+7,500 jobs), manufacturing (+3,700 jobs), restaurants, cafes, and bars (+3,000), and finance and insurance (+2,000). The sectors most impacted by social distancing early in the pandemic are now at or near full recovery. Restaurants and bars have recouped 100 percent of their losses, retail 90 percent, other services (i.e., personal services), 80 percent.

Construction continues to struggle, cutting another 2,000 jobs in July. The boom in home-building hasn't offset the slowdown in industrial, office and retail construction. The energy industry continues to restructure, laying off 500 workers in July, and will likely shed more jobs over the next few months. The gains in manufacturing came in fabricated metal products, presumably driven by energy companies placing new orders for pipes, valves, and flanges.

As of July, Houston had recouped 209,400 (57.9 percent) of the 361,400 jobs lost in the pandemic. Employment remains 152,000 below February '20 levels. Houston's recovery lags that of the nation, which has replaced 16.7 million (74.5 percent) of its 22.3 million lost jobs. The data reflects employment as of mid-July—before the Delta variant began to surge. Delta's impact won't appear in the employment data until the August report is released, which won't be until late September. If consumers, out of fear, stop dining out, visiting bars, and attending events, that will impede Houston's recovery. The region might backslide a bit, but significant losses like those of last March and April are unlikely.

If the economy follows historic patterns, Houston should add 40,000 to 60,000 jobs through the remainder of '21. That suggests a net gain of 80,000 to 100,000 jobs for the year, which would be one of the better years on record. It would still leave the region 90,000 to 110,000 jobs below pre-pandemic employment levels. A full recovery is not likely until early-'23.

## RECORD JOB OPENINGS IN THE U.S.

**Even with the rise of the Delta variant of the coronavirus, there are still plenty of jobs to be had in the U.S. The question is how willing people are to take them and how anxious employers are to fill them.** The Labor Department reported that on the last day of July, there were a seasonally adjusted 10.93 million job openings in the U.S., or 1.3 jobs for every person counted as unemployed—a record for both measures.

One factor behind that jump in job openings: Employers made fewer hires, bringing 6.67 million people on board in July versus 6.83 million in June. That brought the ratio of job openings to hires to a record 1.64. Additionally, the number of people quitting their jobs edged higher, suggesting that renewed worries about Covid-19 were starting to make people more reticent about working.

The report lends credence to the idea that the Delta variant was the main factor behind the disappointing August employment report. Daily Covid-19 case counts, hospitalizations and deaths are higher now. Compounding the problem, in many school districts the pandemic already has disrupted the just-started academic year, putting working parents in the lurch all over again.

At the same time, the number of job openings only appears to have increased. As of August 27th, available positions on job-search site Indeed were up 40.5% from Feb. 1, 2020; at the end of July, that figure was just 35.3%. Companies are hardly throwing in the towel on the recovery, Delta notwithstanding. Given how hard it has been for many employers to find workers, some might be willing to take on new employees even if the level of demand they had hoped for in the post-Labor Day period hasn't arrived. Workers are a hot commodity, after all. That said, companies might not be seeking out workers with the same sense of urgency as in the early summer. And until the Delta wave subsides, many Americans' willingness and ability to go on the job hunt will be diminished. One can therefore imagine job growth remaining cool for a while longer and then suddenly getting very hot.

## U.S. JOBLESS CLAIMS FALL TO NEW PANDEMIC LOW

**Filings for jobless benefits last week fell and reached a pandemic low, extending a downward trend as demand for labor remains high and employers hold onto workers despite the Delta variant of Covid-19.**

Initial unemployment claims, a proxy for layoffs, moved lower in the week ended Sept. 4 to 310,000 from a slightly upwardly revised 345,000 the prior week. The four-week moving average, which smooths out weekly volatility in the data, fell to 339,500, also a pandemic low.

Claims have trended lower since mid-July, a sign employers are holding on to workers despite a rise in coronavirus cases tied to the spread of the Delta variant in many parts of the U.S. and weaker-than-expected job growth in August. The increase in cases has weighed on consumer sentiment and appeared to contribute to the hiring slowdown last month, particularly in the leisure and hospitality industry.

While claims are down sharply from levels earlier this year, they remain nearly 100,000 above their pre-pandemic trend. Weekly claims averaged 218,000 in 2019. More broadly, the economy had roughly 5.3 million fewer jobs in August compared with the pandemic's onset in February 2020.

Employers nationwide have reported difficulty in filling job openings, which have leveled off at records, while millions of Americans remain unemployed. Sarah House, senior economist at Wells Fargo, said that difficulty could be one reason initial jobless claims have continued falling despite employers reporting that the Delta variant is injecting renewed uncertainty into their plans.

Sept. 6 marked the expiration of enhanced unemployment benefits for many Americans, such as a $300 weekly supplement to regular state benefits that was included in government pandemic aid. About half of U.S. states had opted to end their participation earlier this summer.

## HOUSTON'S UNEMPLOYMENT RATE

**The unemployment rate for metro Houston continues to improve but remains above that of Texas and the U.S. The Texas Workforce Commission (TWC) estimates there are 240,000 Houstonians who are unemployed and actively looking for work, a dramatic improvement from the 470,000 out of work in April '20.**

That, however, understates the true level of unemployment in the region. Calculations based on TWC data suggests there are 50,000 to 85,000 fewer Houstonians in the workforce today compared with prior to the pandemic. They've dropped out for a variety of reasons: fear of catching COVID in the workplace, lack of day care for their children, generous unemployment benefits, early retirements, wanting time off to be with family, or needing time off for personal growth. If the dropouts were included in the calculations, Houston's unemployment rate would likely exceed 9.0 percent.

## JOB GAINS TEMPERED IN OIL FIELD BUSINESS

**The U.S. oilfield services and equipment sector added the fewest jobs in four months as a surge in COVID-19 infections appears to be slowing job growth nationally.**

Employment in the sector, dominated by companies like Halliburton, Schlumberger and Baker Hughes, rose by an estimated 3,711 jobs, or 0.6 percent, in August, the slowest rate since April when sector employment rose by 1,352 jobs. Nationally, the U.S. economy in August created the fewest jobs in seven months as the delta variant slowed hiring in many sectors, including restaurants, hospitality and retail.

Still, August was the oil-field service sector's sixth straight month of growth, according to data from the Bureau of Labor Statistics analyzed by Houston trade group Energy Workforce & Technology Council.

The sector has recovered 42,200 of the 115,000 jobs that were lost last year during the pandemic. Employment reached a low in February at 591,413 jobs, down nearly 12 percent since the pandemic began in March 2020.

The oilfield services sector has been among the industry's hardest hit during the pandemic, which slashed demand for oil and products such as gasoline and jet fuel. Many exploration and production companies, which hire oil-field services firms, stopped drilling new wells and halted production from existing wells for several months last year.

During the worst period of pandemic-related cuts, oil-field services companies slashed almost 57,300 jobs in April 2020, when crude prices fell into negative territory for the first time. It was the largest job loss recorded in the sector in a single month since at least 2013.

The rollout of coronavirus vaccines has lifted local economies and travel, boosting demand for gasoline and jet fuel. U.S. drillers have added more than 250 rigs since the rig count fell to a low of 244 in August, according to oil-field services firm Baker Hughes.

There are more than 600,000 employees in the oil-field services and equipment sector nationally, including 314,100 in Texas. The sector employed more than 725,000 jobs in December 2019, when the novel coronavirus was first reported in China.

## SHRM SURVEY ON WORKPLACE CULTURE

**Society for Human Resource Management released findings from a series of surveys that shed light on the perceived condition of workplace culture and its impact on working Americans across varied industries and occupations since the start of the COVID-19 pandemic.**

While 72% of executives – vice president and above – surveyed by SHRM believe their overall organizational culture has improved since the beginning of the pandemic, few HR professionals (21%) and working Americans (14%) would agree. HR professionals and other employees indicate issues with communication, altered workloads and employees voluntarily leaving their companies as primary reasons for negative changes in workplace culture during the pandemic.

Survey results indicate that positive organizational culture keeps employees engaged while increasing business value and job performance, but more than half of the people managers (57%) and HR professionals (62%) surveyed agree that it has been difficult to maintain that culture during the pandemic.

Other key findings from SHRM's research include:

- Almost all HR professionals (99%) agree that they encourage a culture of open and transparent communication, but more than 1 in 4 working Americans (27%) do not think people managers encourage such transparency.

    - Over 1 in 3 working Americans (34%) indicated that their manager does not know how to lead a team and more than 1 in 4 people managers (26%) said their workplace does not provide leadership training.
    - More than half (53%) of working Americans who have left a job in the past 5 years due to workplace culture indicated that they left a job due to their relationship with their manager, while only 22% of working Americans who stayed at a job said they stayed at a job due to their relationship with their manager.
- Working Americans (33%) indicated that their organization's culture makes it difficult to balance their work and home commitments.
    - Many employees (45%) put off important things in their personal life due to the demands of their work.
    - Nearly 3 in 5 employees (59%) leave work feeling exhausted.
    - Workplace culture makes 3 in 10 employees (30%) irritable at home.
    - 14% of employees do not feel engaged with their work tasks and 30% dread going to work.
- Nearly half of all surveyed employees (44%) who worked remotely at least some of the time reported feeling isolated or disconnected; 43% indicated that they worry other people don't think they are working hard enough while being remote.
- Women were more likely to indicate negative effects of poor workplace culture than men.

Although it plays a big role in overall job satisfaction, workplace culture is not the only reason organizations experienced decreased morale and increased talent losses during the pandemic. According to HR professionals surveyed by SHRM, the top three reasons people voluntarily leave their jobs are: lack of career growth opportunities, negative relationships with managers and salary concerns.

## CHALLENGER, GRAY & CHRISTMAS JOB CUTS REPORT

**U.S. based employers announced 15,723 job cuts in August, down 17% from the 18,942 cuts announced in July. Last month's total is the lowest since in June 1997, when 15,091 job cuts were announced, according to a report released from global outplacement and business and executive coaching firm Challenger, Gray & Christmas, Inc. August's total is 86% lower than last August, when 115,762 cuts were announced.**

So far this year, employers have announced plans to cut 247,326 jobs from their payrolls, down 87% from the 1,963,458 jobs eliminated through the same period last year. It is the lowest January-August total on record. The second lowest occurred in 1997, when 260,798 cuts were tracked through August.

"Companies are much more concerned about their talent getting poached than with finding ways to cut staff. They are in full retention mode," said Andrew Challenger, Senior Vice President of Challenger, Gray & Christmas, Inc.

August cuts were led by companies in the Health Care/Products sector, which announced 2,259 cuts. This industry includes hospitals and other health care facilities, as well as health care products manufacturers. Hospitals have struggled with costs since the beginning of the pandemic as revenue-generating elective procedures get cancelled. Others are closing down skilled nursing units due to a shortage of talent.

"The ongoing downturn in supply of labor may very well speed up the adoption of robotics for many companies. While care-related positions are not likely to be replaced, any process that is repeatable, routine, and programmable could be automated, and would help alleviate the shortage of talent," said Challenger.

The Automotive sector announced the second-most cuts in August with 1,665, still plagued by semiconductor shortages causing plant shutdowns and stoppages. The industry is also dealing with pivots to electric or autonomous vehicles.

The Energy sector followed with 1,641 cuts, similarly impacted by shift to renewable, but also the stiff competition and high costs associated with renewable is causing these companies to scale back or shutter.

Market conditions were cited for the most cuts this year with 48,103, followed by store, unit, or plant closings, which accounted for 47,142. A downturn in demand caused 45,146 cuts this year, while "restructuring" was cited for 43,407.

Job cuts due to an acquisition or merger are up 75% this year compared to last year. So far in 2021, 11,981 job cuts were announced for this reason, compared to 6,848 through the same period last year. It is up 37% from the 8,755 cuts announced for this reason in all of 2020.

Companies cited bankruptcy for 2,278 cuts in 2021.

Challenger continues to follow losses in the News industry, which is tracked as a subset of Media cuts. Through August, Newsrooms have announced 1,027 job cuts, with 18 occurring last month. News cuts are down 93% from the 14,626 announced through August last year.

## WILLIS TOWERS WATSON VACCINE MANDATE SURVEY

**The number of U.S. employers requiring workers to get vaccinated is expected to surge over the next several months, according to a new survey by Willis Towers Watson, a leading global advisory, broking and solutions company. The survey also found that more companies will be implementing financial incentives and expanding testing requirements as they update plans to reopen worksites.**

The survey, conducted between August 18 and 25, found that by the fourth quarter of 2021, over half (52%) of employers could have one or more vaccine mandate requirements in the workplace. These range from requiring vaccination for employees to access common areas such as cafeterias to requiring vaccination for a subset of employees to requiring vaccination for all employees.

This is a dramatic increase from the current 21%. Specifically, nearly a third (29%) of employers are planning or considering making vaccination a requirement to gain access to the workplace, and almost a quarter (21%) are planning or considering vaccination as a condition of employment for all employees.

Additionally, the number of employers that will track whether employees have completed their vaccination is increasing. Nearly six in 10 (59%) currently track their workers' vaccination status, and another 19% are planning or considering doing so later this year. A majority (62%) of those require proof of vaccination, such as completed CDC vaccination cards, while 36% rely on employees to self-report.

New policies such as tracking workers' vaccinations can improve safety but also bring additional administrative requirements. At the same time, employers will continue efforts to encourage vaccination and communicate regularly with employees.

Nearly two in 10 organizations (17%) offer financial incentives for getting vaccinated, with another 14% planning or considering doing so. Cash payments from $100 to $199 are the most common financial incentive. Only 2% of employers currently offer a discount to vaccinated employees or impose a premium surcharge on unvaccinated employees. Another 18% are considering one or both approaches. Most employers at this point are not planning or considering either of these financial tactics.

The survey identified the following actions companies are taking or considering as they rethink their reopening plans due to the Delta variant:

- **Mask mandates**: Eight in 10 respondents (80%) require employees to wear masks indoors at any location. Another 13% are planning or considering doing so.
- **Tracing**: Three in four employers (75%) use workplace exposure tracing to alert employees to a potential exposure. Another 8% are planning or considering doing so.
- **Return to normal**: Nearly four in 10 employers (39%) now expect their organizations won't reach a new normal in terms of returning to the workplace and ending pandemic-related policies and programs until the second quarter of 2022. About a quarter (26%) expect a return to the new normal in the first quarter of next year.

"We have reached a point in the pandemic where employers that have worked hard to make it easy for employees to get vaccinated are also considering approaches to make it more difficult for employees to remain unvaccinated," said Dr. Levin-Scherz. "The one certainty right now is that employers will continue to adjust their plans through the remainder of 2021. While some employers will institute more frequent testing, workplace restrictions on the unvaccinated, and vaccination mandates, all will have one common goal in mind — to keep their workforce healthy and productive by minimizing the risk of spreading COVID-19 in the workplace."

## WORK'S FUTURE, BY THE NUMBERS

**This month was supposed to mark the triumphant return to the office, to business travel, to non-wobbly childcare and a post work happy hour or two. Instead, September is ushering in a weird season. In-person school is precarious, Covid-19 cases remain elevated, and the question of where we work remains in limbo. Many employees are nervous or burned out or just feeling restlessness in their careers.**

It isn't the moment many of us hoped for, yet it feels like a pivotal one. To understand where we are and what's coming, let's look at the data. The numbers say attitudes around vaccine mandates are changing. Frustrations with work, and the urge to throw it all away for something new, are accelerating. The gap between what employees want their work lives to look like, and what bosses think we'll eventually snap back to, persists. And parents, especially mothers, are staring down another strange school year and struggling.

**Here's where 18 months of change has landed us.**

**'I quit' -** People are on the move—or want to be. Nearly two-thirds of workers are looking for a new job, according to an August survey by PricewaterhouseCoopers LLP. That's up from about one-third of workers polled in May. Job seekers say they're motivated by the promise of more money, benefits and chances to climb the ladder. Bosses feel the pressure. The overwhelming majority—88%—said they're seeing higher turnover than normal. Meanwhile, polls show employee engagement ticking down and workers willing to walk if they're called back to the office. Search firm Korn Ferry recently asked 378 professionals what they'd do if their employers mandated in-person work, even just a few days a week. Twenty-one percent said they'd refuse to go back, and 17% said they'd quit.

**Changing calendars -** Those employees may have more time before they need to bust out their remote-work ultimatums. Four in 10 corporate leaders polled by employment law firm Littler Mendelson P.C. said last month that they were delaying plans to bring more employees back, in an effort to keep staff safe amid the Delta variant of Covid-19. In recent weeks, companies such as Apple, Chevron and Wells Fargo & Co. have pushed back their dates. The delays also reflect an increase in employee concerns. Some 42% of 2,482 people polled by the Conference Board last month said they worried about the possibility of catching the virus while returning to the office. That's up from 24% with such concerns in a June survey by the organization. Employees are also increasingly worried about exposing their family members to Covid. It's a moment of jitters, and limbo. Some employees have watched multiple return-to-work dates sail by. Yet they're still typing away from their kitchen tables. Sure, many are eager to stay home. But others are craving their old office lives, or at least some sort of firm plan about what comes next.

**A stance on shots -** Getting to the next phase could require rolling up your sleeve. Even before President Biden's new plan requiring large employers to mandate that their workers get vaccinations or weekly Covid-19 tests, more companies were moving toward such mandates. About a fifth of 961 employers surveyed by Willis Towers Watson from Aug. 18-25 said they had some sort of vaccination requirement, whether it be to access an indoor cafeteria or stay employed. By the end of the year, a total of 52% could have such a rule, the survey found. This past spring, only 9% had vaccination requirements.

Mr. Biden's announcement is likely to drive the share of companies enacting mandates even higher. More employers are also considering tracking who's been vaccinated—59% do so now, 19% are planning to or considering it. And of those who require vaccinations, more companies are asking for proof.

What does the public think? In a September poll from CivicScience, 56% of 2,282 people surveyed agreed that proof of vaccination should be required to go to work, compared with 27% who disagreed. Some employees are losing patience with unvaccinated colleagues, increasingly supporting measures like restricting them from in-person work and business travel, according to spring and summer polls from Eagle Hill Consulting. The share of workers who told the management consulting firm that non-vaccinated employees should be able to stay with their employer dropped to 76% in August from 83% in April.

**The weight on working mothers -** What has happened to moms during the pandemic? They haven't left the labor force in droves, says Misty Heggeness, a Census Bureau economist whose new paper analyzes mothers of school-aged children. The share of those women in the labor market dropped to 71% in May 2020 from 74% in 2019, then climbed back to 72.4% this July. Still, moms were 26.4% more likely to leave the labor force than dads of school-aged children and 15.8% more likely to leave than women living without dependent children. Those who stayed employed struggled, too. Many mothers veered into burnout, took stretches of leave and suffered setbacks in their careers. With parents stumbling into a school year of exposure risk and quarantines, there's a chance that more women exit.

**The future is hybrid -** Good news: employers are getting more comfortable with the idea of you working from home indefinitely. Bad news: they still want you in the office more than you'd like. Since the start of the year, employers have boosted the number of days they plan to let employees work from home post-Covid by 18%, to an average of 1.23 days a week from 1.05 days a week. That's according to research from Nicholas Bloom, an economist at Stanford University, Jose Maria Barrero, an assistant professor of finance at Instituto Tecnológico Autónomo de México, and Steven J. Davis, an economist at the University of Chicago. Workers, on the other hand, want to telecommute 2.29 days a week, or 86% more than their bosses envision, the economists found. Most people want a mix, but the purists overwhelmingly prefer home. The Conference Board survey found that 4% of workers want to work exclusively in the office, while 20% want to work remotely full time.

## PRESIDENT BIDEN'S COVID-19 ACTION PLAN

**On September 9, 2021, President Biden released his COVID-19 Action Plan, Path Out of the Pandemic (the "Plan").** The Plan mandates vaccination against COVID-19 for employees working for employers that have 100 or more employees, as well as employees that work for the federal government or healthcare entities, and/or are federal contractors. The following Q&As address some of the common employer concerns regarding Biden's Plan and the upcoming OSHA Emergency Temporary Standard (ETS).

***1.Will the White House issue an executive order regarding the ETS?***
No, we do not anticipate that the White House will release an official executive order regarding the ETS.

***2.If there is no executive order to be challenged, will we have an opportunity to provide comment on the ETS before it takes effect?***
No, there will likely be no opportunity for comment before the ETS takes effect immediately upon publication in the *Federal Register*. The president has asked OSHA to issue the ETS as soon as possible. OSHA will ask stakeholders to provide comment afterwards, when the agency considers approving a permanent standard.

***3.What can we do to voice our concerns about the ETS before publication?***
Write a letter or join a coalition to write a letter on your behalf addressing your concerns. Littler Workplace Policy Institute (WPI) is joining forces with the business community to assist employers with their concerns. Data that describes infeasibility of implementation, issues with compliance and enforcement, or extensive cost measures will likely be helpful information to OSHA's formulation of certain provisions in the ETS. If most employers cannot comply with the standard

as drafted, OSHA's efforts will be futile and will likely render the regulation ineffective and could lead to extensive litigation.

***4.There already was a healthcare COVID-19 regulation published in June. Can OSHA issue a new ETS now at this late juncture?***
Yes, they can, although it is quite rare. OSHA published its last ETS in 1986. Under certain limited conditions, OSHA may set emergency temporary standards that take effect immediately until superseded by a permanent standard. OSHA must be able to demonstrate a "grave danger" due to exposure of a "new" hazard such that an emergency standard is needed to protect workers. Once the standard is published in the *Federal Register*, it becomes effective.

***5.When will the ETS be issued?***
OSHA's track record during the pandemic tells us it may take some time for OSHA to develop a draft. OSHA stated it plans to issue the ETS within 2-8 weeks.

***6.When will the ETS be effective?***
The ETS will be effective once the standard is published in the *Federal Register*.

***7.What will the duration of the ETS be?***
The ETS will be effective until a permanent rule is issued. The ETS will be considered the proposed permanent rule until stakeholders provide comment and it goes through a permanent rulemaking process.

***8.Will the ETS have any requirements for customers or third parties (vendors)?***
The ETS will likely include requirements for customers and third parties. OSHA's multiple employer COVID compliance directives have indicated that employers are required to take measures to protect all workers in their worksites, even those who are not their employees. Employers are also required to protect their own employees from hazards created by customers and other third parties. OSHA will likely include requirements on how employers must limit customer and third-party interactions with employees, as well as take care to ensure that other workers in their worksites are not similarly exposed to COVID.

***9.What else will likely be included in the ETS?***
The ETS might include requirements for a written plan, vaccinations, testing, masking, physical distancing in the workplace, compliance with CDC guidance, engineering controls such as filtration or ventilation processes, paid time off for vaccinations or testing, paid time off for ill employees, incentive plans for vaccinations, policies for communicating information to employees, cleaning procedures, recordkeeping procedures, and more.

***10.How will the ETS calculate 100 employees? Per worksite, per organization or per enterprise?***
In some of its debriefings regarding the regulation, OSHA has indicated that the ETS will likely calculate the 100-employee requirement to mean 100 employees in an enterprise, not 100 employees per worksite.

***11.How will this affect state plans already in place?***
Generally, federal OSHA does not have jurisdiction where there are state plans, but state standards must be at least as stringent as federal standards. If the federal standard requires vaccine mandates for enterprises, many states may have to revise their plans or adopt the federal ETS.

***12.Does the ETS apply to remote employees or just office workers?***
It depends. OSHA generally only has jurisdiction over worksites where an employer can expose, control, correct or create a hazard. This means that the ETS will likely apply when workers visit any assigned work location, regardless of whether the employer actually controls the

location. In that instance, the employer may be considered the exposing employer and will likely have to adopt protocols under the ETS to protect its employees. The ETS will not apply to employees who telecommute, *i.e.*, work remotely from home.

***13.What will employers use to verify vaccine status?***
OSHA has not answered this question yet. The ETS will likely provide specific guidance on vaccine verification. Note that there may be a potential conflict between the ETS's vaccine mandate and certain state laws, such as in Montana, where employers are prohibited from taking any adverse action based on an employee's vaccination status. Employers should start considering feasible processes to determine vaccination status in a manner that also complies with state law.

***14.Will the vaccination mandate be satisfied after one vaccination dose?***
OSHA will likely require the employee to be fully vaccinated because data shows that partially vaccinated individuals are not sufficiently protected from the Delta variant. Fully vaccinated means 14 days after completing two doses of the Pfizer or Moderna vaccine, or one dose from the Johnson & Johnson/Janssen vaccine.

***15.How will things change in the ETS if the FDA approves a booster shot for the vaccinations?***
Eventually, we may see a change in definition of "fully vaccinated" to mean three shots of Pfizer. Once Moderna and Johnson & Johnson obtain FDA approval and there is sufficient quantity of the shots available, we could see that fully vaccinated means at least three shots of Moderna and possibly two shots of Johnson & Johnson/Janssen.

***16.Under the Plan, is it likely that employers can require vaccinations instead of allowing for testing?***
Yes, but not for all workers. Some workers may require an accommodation for medical or religious reasons. One manner to accommodate these types of requests would be to grant an exemption from the vaccine requirement and instead require frequent testing. Employers can also allow certain employees to work remotely.

***17.Under the Plan, do employers need to pay for time spent testing?***
While the Plan includes efforts aimed at reducing the costs of home rapid tests, it is not yet clear whether the ETS will include directives about whether employers or employees will bear the burden of the cost of testing, or whether time spent testing should be considered compensable time. Without any directive in the ETS on these questions, existing federal and state wage/hour law will apply to an employer's program under the ETS. Biden's plan states that top retailers will sell at-home rapid tests at cost for the next three months. The Plan also expands free testing by increasing the number of retail pharmacy sites around the country where anyone can get free testing. Even if an employer intends to use free testing, the employer will likely have to pay employees for the time they take to administer the test. Employers will also have to train employees if they are providing a home rapid test to ensure employees are properly administering the test in order to return accurate results.

***18.Under the Plan, do employers need to pay for time spent getting vaccinations?***
The Plan includes direction to "ensure that no worker loses a dollar of pay because they got vaccinated." Accordingly, we anticipate that the ETS will provide expanded paid time off for the time spent getting vaccinations and the time it takes the employee to recover from any effects of the vaccination. In some states, there are already requirements for COVID paid sick leave that cover vaccination time.

***19.Can covered employers ask for and receive test results?***
Yes. If the ETS requires disclosure of the test results for compliance, the employer must ask for employees' results. The employer must analyze its processes to ensure confidentiality

compliance under the ADA and state law. Employers should review state confidentiality and privacy laws to determine if additional measures need to be adopted.

***20.If an employee refuses vaccinations or testing, is the employer allowed to fire the employee?***
Possibly. If an employer is mandating vaccinations and accommodating only those employees with medical or religious exemptions, they can terminate the employment of those employees who do not qualify for an exemption. If an employer is allowing for testing in lieu of vaccinations, and the employee refuses to test, the employer may have grounds to terminate, so long as the employee does not need an accommodation relating to testing. The employer can also look for other accommodations instead of testing such as remote work options or paid or unpaid leave.

***21.For the executive order issued relating to federal contractors, to whom does the federal contractor mandate apply?***
The new contract clause will "apply to any workplace locations in which an individual is working on or in connection with a Federal Government contract or contract-like instrument." Employees perform services "on" a contract when they perform the work required by the contract and perform "in connection with" a federal contract when they perform services not required by the contract, but are necessary to the performance of the contract's services, such as custodial, security, or maintenance services at facilities that perform both commercial and government work. The executive order applies to "any workplace locations . . . in which an individual is working on or in connection" with a contract. The executive order is ambiguous about several important issues. We will continue to monitor federal agency and executive actions, and report on significant developments.

## SOURCES

Greater Houston Partnership, Houston Chronicle, Wall St. Journal, Littler, SHRM, Willis Towers Watson, Challenger Gray & Christmas