

# Jeff Ruzal Quoted in “Covid Testing Costs Hit Employers’ Wallets as Biden Pushes Shots”

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**Jeffrey H. Ruzal**, Member of the Firm in the Employment, Labor & Workforce Management practice, in the firm’s New York office, was quoted in the *Bloomberg Daily Labor Report*, in “Covid Testing Costs Hit Employers’ Wallets as Biden Pushes Shots,” by Robert lafolla, Lydia Wheeler, and David Hood.

Following is an excerpt:

Covid-19 tests for unvaccinated workers will come out of some employers’ pockets even if President Joe Biden’s mandate doesn’t explicitly require it, creating one more incentive for companies to get employees shots.

The tests themselves will likely fall under state laws in places like California and Illinois that require employers to reimburse workers for job-related expenses, employment lawyers said. And the time it takes to get tested may be covered by federal or state wage law.

The issue of who pays for testing is a crucial concern for businesses as the Occupational Safety and Health Administration develops an emergency temporary standard requiring employers with at least 100 workers to either require vaccinations or weekly testing. At a median cost of \$148 for each Covid-19 test, according to the Kaiser Family Foundation, frequent testing could quickly add up for employers.

OSHA’s ultimate decision on who’s responsible for testing costs will reflect a strategic decision on how to boost lagging vaccination rates, lawyers said. ...

## People



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## Focus Areas

### Services

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### *Pay for Testing Time*

The U.S. Supreme Court's 2014 decision in *Integrity Staffing Solutions v. Busk* set the legal framework for determining whether the time it takes for a work-related test must be paid under federal law, lawyers said. Activities outside of a regular shift are compensable if they're "integral and indispensable" to employees' principle work duties.

The Labor Department has signaled that it views testing for public-facing workers as meriting payment. The department's Wage and Hour Division said in guidance that a grocery store cashier who interacts with customers would likely require payment. ...

Some state wage laws could require payment for testing even if the FLSA doesn't. The analysis on whether testing time outside of work requires compensation is similar to that for other activities, like pre-shift security screening or temperature checks, attorneys said.

Practical consequences of mandatory testing could raise other wage law issues, said Jeffrey Ruzal, an attorney at Epstein Becker & Green P.C. A worker who arrives at work but is sent home after a positive Covid-19 test could be owed pay under a state or local predictive scheduling law, he said.