

## Employment Law Update: Federal Contractors Subject to Vaccine Mandate

11/15/21

Pursuant to President Biden's [Executive Order 14042](#) on Ensuring Adequate COVID Safety Protocols for Federal Contractors, issued on September 9, 2021, certain federal contractors will have to comply with the [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#) promulgated by the Safer Federal Workforce Task Force.<sup>[1]</sup> Some government agencies have contacted federal contractors in order to amend existing contracts to comply with the Executive Order and Guidance. Moving forward, any new covered federal contracts will include a clause to comply with the Executive Order and Guidance. This blog outlines the requirements established by the Guidance for employers with current federal contracts or those seeking future contracts.

### The Guidance Establishes 3 Main Requisites

#### First Requirement

The first requirement is that all covered contractor employees receive the COVID-19 vaccine unless an employee is legally entitled to an accommodation. "*Covered contractor employees*" are defined as:

any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Work performed "on or in connection with a covered contract" includes employees who perform duties necessary to the performance of the covered contract, but who are not directly engaged in performing the specific work called for by the covered contract, such as human resources, billing, and legal review. The Guidance defines a "*covered contractor workplace*" as a:

location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee's residence.

#### Second Requirement

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace. Specifically:

- In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions explained below.
- In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask.

- Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and workspaces.

Covered contractors may provide for exceptions to mask-wearing and/or physical distancing requirements consistent with CDC guidelines. Example include:

- When an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing;
- Activities in which a mask may get wet;
- High-intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing;
- Activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a workplace risk assessment.

### **Third Requirement**

Contractors must designate a person to coordinate the implementation and compliance of this Guidance and the workplace safety protocols at covered contractor workplaces. This individual should monitor the CDC guidance. The Guidance provides that this individual must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The individual must also ensure that covered contractor employees comply with the requirements in the Guidance related to presenting or providing proper vaccination documentation.

### **Vaccination Verification**

Contractors must require covered contractor employees to provide one of the following documents:

- A copy of the record of immunization from a health care provider or pharmacy;
- A copy of the COVID-19 Vaccination Record Card;
- A copy of medical records documenting the vaccination;
- A copy of immunization records from a public health or State immunization information system; or
- A copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine.

### **Subcontractors Covered by the Guidance**

The Guidance requirements apply to subcontractors at all tiers, except for subcontracts solely for the provision of products. The chief 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.

### **Employee Compliance Deadline**

The Guidance initially provided that covered contractor employees must be fully vaccinated no later than December 8, 2021. However, the Biden administration has clarified that federal contractor employees will need to have their final vaccination dose (either their second dose of Pfizer or Moderna or a single dose of Johnson & Johnson) by January 4, 2022. The date was set to coincide with the OSHA vaccine requirement.

**Takeaway:** Employers who currently have federal contracts, or who plan to obtain contracts in the future, should determine if the contracts are covered under the Guidance and plan their compliance accordingly. If you have any questions about compliance with the Guidance contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

[1] The Guidance covers many different types of federal contracts; however, there are exclusions.

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