

Client Alert: Vaccination Required for Employees Working in Connection with Government Contracts or in Shared Facilities

Publications

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The Safer Federal Workforce Task Force (Task Force) issued its much anticipated guidance to federal contractors pursuant to President Biden's Executive Order 14042 (EO), which we covered here. Simply put: the Task Force imposes a broad requirement that contractor employees get vaccinated—whether they are full-time or part-time; whether they work at a contractor workplace, Federal workplace, or from their homes; and whether they work directly on a government contract, indirectly, or only at the same workplace as those who do. And this must be done by the holidays: the guidance requires prime contractors and subcontractors at any tier to ensure that all of these employees are fully vaccinated by December 8, 2021, unless they are legally entitled to an accommodation. (Thus, employees covered by the guidance must receive a single-dose vaccine or the second dose in a two-dose series by the Monday before Thanksgiving.) Here are some key takeaways from the guidance:

What contracts and contractors are subject to this guidance? The guidance covers any prime contractor or subcontractor at any tier—regardless of size—who is a party to a contract or “contract-like instrument” for services (including construction). The FAR Council will be issuing a clause to be incorporated in new contracts, extensions, and options after October 15. The guidance encourages agencies to incorporate a clause requiring compliance into contracts not covered by the EO, including those for products and those below the Simplified Acquisition Threshold. The guidance also encourages agencies to modify existing contracts to incorporate the requirement.

What must covered contractors do to comply? Contractors must ensure that all employees are fully vaccinated against COVID-19, unless the employee is legally entitled to an accommodation no later than December 8, 2021. Contractors must also comply with CDC guidance related to masking and physical distancing, and must designate a coordinator for COVID workplace safety efforts. Specifically:

- Contractors must require employees to show or provide a record of immunization, such as a COVID-19 vaccine card; a digital copy, including a photograph, is acceptable.

- Contractors are *not* required to provide onsite vaccination for their employees and the guidance is silent on whether employees must be provided time off to receive their vaccine doses.
- Contractors are “responsible for considering, and dispositioning” requests for accommodation. The guidance notes that contractors “may be required to provide an accommodation” because of a disability, sincerely held religious believe, practice, or observance.
- Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Which employees must be vaccinated? The guidance requires vaccination for any full-time or part-time employee, who is not entitled to an accommodation, if they (1) perform work on or in connection with a covered contract, or (2) work at a location where those employees are, even if they themselves are not working on or in connection with a covered contract. This includes:

- Employees working on or in connection with a covered contract from their homes;
- Employees who do not work directly on the contract but “who perform duties necessary to the performance of the covered contract...such as human resources, billing, and legal review;” and
- Employees not working in connection with a covered contract but working from the same location as those who do (or where they are “likely to be present”).

When is an employee considered fully vaccinated? Employees are considered fully vaccinated two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is no post-vaccination time limit on fully vaccinated status.

The breadth of the Task Force guidance will create significant questions for contractors as they seek to implement its requirements. Jenner & Block will be closely monitoring updates to the guidance issued by the Task Force and regulations issued by the FAR Council and OSHA, and other agency-specific actions. Our lawyers stand ready to assist our clients as they determine how to respond to the Administration’s latest requirements and guidance.

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