

# President Biden Signs Executive Order Announcing Plan For A COVID-19 Vaccination Requirement For Federal Contractor Employees

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During a press conference Thursday afternoon, President Biden announced a broad plan that will include as-yet undefined guidance to require **federal contractors** to “provide adequate COVID-19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument.” While the President’s remarks and the Administration’s corresponding plan suggest a vaccine mandate, the President’s Executive Order does not explicitly mandate a vaccination requirement. The requirement, however, is expected to be established by the Safer Federal Workforce Task Force.

The President’s plan is encompassed in an [Executive Order](#) covering federal contractors (discussed below) and a White House broader publication entitled “[Path Out Of The Pandemic – President Biden’s Covid-19 Action Plan](#).” The text of the plan states

the President has signed an Executive Order to take those actions a step further and require all federal executive branch workers to be vaccinated. The President also signed an Executive Order directing that this standard be extended to employees of contractors that do business with the federal government.

President Biden’s broader plan will also include a requirement that **all employers with 100 or more employees** “ensure” their workforces are either “fully vaccinated” or test negative for COVID-19 at least once a week. Press outlets briefed on the plan today say that OSHA will issue an emergency rule to implement this aspect of the plan. Additionally, the plan is to require employers to provide employees paid time off to get vaccinated.

The multi-faceted plan the President announced today comes on the heels of a [mandate announced in August](#) that all federal employees and **on-site federal contractor employees** either be vaccinated

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against COVID-19 or face repeated testing, and comply with strict social distancing and masking requirements. A recorded webinar regarding the on-site federal contractor mandate can be [found here](#).

## Today's Federal Contractor Executive Order

The President's Executive Order, "[Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)," provides and outline, but stops short of requiring the vaccine and leaves the most critical details to a contract clause to be crafted by the Safer Federal Workforce Task Force. Specifically, the Order the states:

[b]y September 24, 2021, the Safer Federal Workforce Task Force (Task Force) shall, as part of its issuance of Task Force Guidance, provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

The Order does make clear that federal contracting agencies shall

ensure that contracts and contract-like instruments (as described in section 5(a) of this order) include a clause that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance).

It goes on to state the clause will:

...provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations **working on or in connection with a Federal Government contract** or contract-like instrument (as described in section 5(a) of this order).

The Order is similar in many respects to the President's [federal contractor minimum wage order](#). For example, "[t]his clause shall apply to any workplace locations (as specified by the Task Force Guidance) in which an individual is working **on or in connection with a Federal Government contract**. Thus, the mandate will not apply to a federal contractor's entire workforce.

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As with the federal minimum wage, the COVID Order will apply to any new contract, as well as “new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument...”

Notably, the Order does not apply to manufacturers or suppliers of goods, to grants, to contracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act, or to employees who perform work outside the United States or its outlying areas.

Rather, the Order applies to:

- Procurement contracts for services, construction, or a leasehold interest in real property;
- Contracts for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq.;
- Contracts for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); and
- Contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

And explicitly does not apply to:

- grants;
- contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended;
- contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as that term is defined in section 2.101 of the Federal Acquisition Regulation;
- employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or
- subcontracts solely for the provision of products.

### ***Milestone and Effective Dates***

- September 24, 2021: the Safer Federal Workforce Task Force will issue its guidance/draft clause;
- October 8, 2021: contracting agencies shall take steps to include the clause in contracts entered into on or after October 15, 2021 that are not covered by the Federal Acquisition Regulation;
- October 15, 2021: the date when the clause should begin appearing in covered contracts.

As we know you are, we are anxious to learn more about the task force guidance and clause and will keep you posted as we learn more.

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