

Safer Federal Workforce Task Force Publishes Guidance for Contractor COVID-19 Vaccine Mandate

Article By:

Jack Blum

On September 24, 2021, the Safer Federal Workforce Task Force (Task Force) [published](#) its [expected](#) guidance regarding the COVID-19 vaccination mandate for federal government contractors. This Guidance defines the specific parameters of the vaccine mandate, as well as other safety protocols that contractors must follow.

The Guidance clarifies that all “covered employees” must be fully-vaccinated by **December 8, 2021**. An employee is fully vaccinated two weeks after he or she receives all doses of an approved vaccine. Employees are not required to receive any vaccine booster to qualify as fully vaccinated. Contractors are required to obtain documentation of each employee’s vaccination status – an employee’s attestation is not sufficient. In addition, the Guidance provides that prior COVID-19 infection or antibody test results may not be substituted for vaccination. After December 8, 2021, contractors must ensure that employees are fully vaccinated by the first day of performance on a federal contract. The Guidance provides for accommodations from its mandate for employees who communicate that they are not vaccinated due to a sincerely-held religious belief or disability. Contractors are responsible for determining accommodations, even when the employee performs his or her services at a federal worksite.

As suggested by the Executive Order announcing the mandate, the vaccination requirement will apply to employees of federal contractors who do not work on or in connection with a federal contract, and instead perform only commercial work. A “covered employee,” for purposes of the mandate, includes any full-time or part-time employee who works at a location at which an employee working on or in connection with a contract “is likely to be present.” So, an employee performing solely commercial work in a facility, building, or campus where contract work is also being performed would likely be subject to the mandate. The Guidance has a limited exception for situations where commercial and contract workers perform services in distinct areas of the same facility, but the contractor must “affirmatively determine” that there will be “no interactions,” including in common areas like lobbies, elevators, and parking garages, between contract and commercial employees at the facility in order to avoid extending the vaccine requirement to all employees at the facility. Fully remote workers who perform work on federal contracts from home are also subject to the vaccination mandate.

In addition to the vaccine mandate, federal contractors are also subject to new masking and social

distancing protocols. Unvaccinated employees (*i.e.*, those who obtain accommodations from the mandate) are required to wear masks in indoor and crowded outdoor areas and maintain a distance of six feet from others at all times to the extent practicable. Vaccinated employees are required to wear masks indoors in areas of high or substantial community transmission, as determined by the CDC. In areas of low or moderate transmission, fully vaccinated employees do not need to wear a mask. Regardless of the transmission level, fully vaccinated employees are not required to socially distance. Contractors are required to check the CDC's transmission level for any covered work locations on a weekly basis to determine the proper safety protocols. Contractors are also required to ensure that visitors comply with applicable masking and social distancing requirements. Contractors must also designate a specific employee to coordinate COVID-19 workplace safety efforts at covered workplaces. Fully remote employees who work from home are not required to follow masking or social distancing protocols.

Contractors with federal contracts or subcontracts pre-dating October 15, 2021 will be required to comply with the Guidance when an extension or option is exercised with respect to the contract. After November 14, 2021, most new federal contracts will contain the clause requiring compliance. For contracts issued between October 15, 2021 and November 14, 2021, agencies appear to have some leeway with respect to inclusion of the contract clause, though the Guidance and prior Executive Order strongly encourage the clause's inclusion.

COVID-19 vaccine mandates present complex issues for employers, especially when employees request religious or disability-based accommodations. The proliferating COVID-19 vaccine mandates – from the Guidance, OSHA's forthcoming emergency temporary standard, and, in some jurisdictions, state and local authorities – only add additional complexity to this rapidly-developing issue. Given the short timeframe between the October 15, 2021 date on which the clause will start being included in contracts and the December 8, 2021 vaccination date, contractors who expect to receive covered contracts in the near future should begin preparing now to ensure their workforce's compliance with the vaccination mandate.

© Polsinelli PC, Polsinelli LLP in California

National Law Review, Volume XI, Number 267

Source URL: <https://natlawreview.com/article/safer-federal-workforce-task-force-publishes-guidance-contractor-covid-19-vaccine>