

New Guidance and Deadlines for Federal Contractor COVID-19 Safety Protocols

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Companies that enter into new contracts with the federal government or agree to let the federal government exercise an option or extend an existing contract may be subject to new federal contractor vaccine requirements.

Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), mandates COVID-19 vaccines for federal contractors and subcontractors and ensures other workplace safety protocols for these contractor employees. The White House Safer Federal Workforce Task Force released [guidance](#) covering the COVID-19 vaccine, mask, and social distancing requirements for federal contractors and subcontractors and issued [new FAQs](#) that provide additional clarity on that guidance.

Federal agencies must incorporate the COVID-19 safety requirements in existing contracts awarded before October 15, 2021 when an option is exercised or an extension is made, and in new contracts awarded on or after November 14, 2021. For contracts and solicitations issued between October 15 and November 14, federal agencies must include the requirements in solicitations and are encouraged to include the requirements in contracts awarded during this time. Companies that are not subject to these federal contractor COVID-19 safety requirements, however, may still be subject to the OSHA or CMS vaccine mandate rules.

Covered contractor employees must provide proof of full vaccination against COVID-19 by January 18, 2022, so now is a good time to review the order, guidance, and FAQs and make a plan for implementation to ensure full compliance.

Covered Contracts

The guidance applies to:

- Contracts for services, construction, or leasehold interest in property
- Services covered by the Service Contract Act

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- Concessions contracts under the Service Contract Act
 - Procurement contracts for construction covered by the Davis Bacon Act
 - Contracts relating to federal property or land offering services to federal employees, their dependents, or the general public

The guidance excludes grants, contracts or contract-like instruments with Indian tribes, contracts with a value equal to or less than the simplified acquisition threshold (currently \$250,000), employees performing work outside the United States, and subcontracts solely for the provision of products. The guidance strongly encourages agencies to incorporate a clause requiring compliance with the guidance into contracts that are not covered.

Vaccination Requirements

All covered contractor and subcontractor employees must be fully vaccinated, unless the employee is legally entitled to an accommodation for a disability or sincerely held religious belief. The vaccine requirement applies to full- and part-time employees working remotely on or in connection with a covered contract. Covered contractor employees must provide proof of full vaccination against COVID-19 by January 18, 2022, so employees must receive the last dose by January 4 to meet the deadline. After January 18, covered employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, exercised option, or extended or renewed contract. (This January deadline is a recent change. It replaces the original December deadline and now matches the deadline set forth by OSHA and CMS.)

To prove vaccination status, covered contractors must require that their employees show or provide one of the following documents (or a paper or digital copy such as a photograph, scanned image, or PDF):

- The record of immunization from a health care provider or pharmacy
- The COVID-19 Vaccination Record Card
- Medical records documenting the vaccination
- Immunization records from a public health or state immunization information system
- Any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of the health care professional or clinic site administering the vaccine

Additional Requirements

In areas of high or substantial transmission, fully vaccinated individuals must wear a mask in public indoor settings (although they may lower their mask briefly for identification purposes to comply with safety and security requirements). In areas of low or moderate transmission, fully vaccinated people generally do not need to wear a mask or physically distance in federal buildings or on federal lands, unless federal, state, local, tribal, or territorial laws, rules, or regulations mandate otherwise. The

Safer Federal Workforce also suggests following CDC guidance for mask-wearing and physical distancing in specific settings such as health care, transportation, correctional and detention facilities, and schools. Before being subject to a contractual requirement to be vaccinated, contractors should provide onsite contractor employees with the [Certification of Vaccination form](#) when they enter a federal building or federally controlled worksite. Non-fully vaccinated onsite contractor employees, federal employees, and visitors (or those who decline to provide information about their vaccination status) must provide proof of a negative COVID-19 test from no later than the previous three days when in a federal building or federally controlled worksite. Additionally, these individuals who are not fully vaccinated must continue to wear a mask and physically distance in federal buildings and on federal lands.

Contractors must post signage providing information on safety protocols for fully vaccinated and non-fully vaccinated visitors and must also designate an individual to coordinate COVID-19 workplace safety efforts. To help determine proper safety protocols, covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) at least weekly to gather community transmission information in all areas where a covered contractor workplace is located. Covered contractors must not reduce safety protocols in a particular area until the level of community transmission in the area remains below a substantial level for at least two consecutive weeks. A “covered contractor workplace” is defined 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.” The entire building at which a covered contractor employee works is considered a “covered contractor workplace” — unless the contractor can prove that none of its employees in another area of the building will come into contact with a covered contractor employee during the performance of a covered contract.

Addressing Noncompliant Employees

The guidance recommends that federal contractors first follow their usual processes for enforcement of workplace policies, including those addressed in employee handbooks or collective bargaining agreements. The FAQs suggest that federal contractors encourage employees to comply by offering counseling and education, followed by additional disciplinary measures if needed, and only after continued noncompliance should employers terminate an employee. Employers should not place employees on administrative leave while the agency pursues an adverse action against those refusing to be vaccinated but must follow safety protocols for non-fully vaccinated employees when reporting to agency worksites, per the FAQs.

Timeline and Next Steps

Federal agencies must include a clause incorporating the COVID-19 safety requirements in solicitations and contracts for services as follows:

- In existing contracts awarded before October 15, 2021, agencies must incorporate the requirements at the point at which an option is exercised or an extension is made.
- In new contracts awarded on or after November 14, 2021, agencies must incorporate the requirements.
- For contracts and solicitations issued between October 15, 2021, and November 14, 2021, agencies must include the requirements in solicitations and are encouraged (but not required) to include the requirements in contracts awarded during this time period.

Contractors with a federal contract or subcontract incorporating the requirements must flow the requirements down to the next lower-tier subcontractors. Covered contractor employees must provide proof of full vaccination by January 18, 2022. After that date, covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, exercised option, or extended or renewed contract when the clause has been incorporated into the covered contract.

The Executive Order guidance governs over any contrary state or local law or ordinance. States or municipalities may, however, implement more protective workplace safety measures.

Several lawsuits have been filed in federal court seeking to invalidate the Executive Order and guidance. Thus far, one district court judge has blocked the vaccine mandate for federal contractors from going into effect in in Kentucky, Ohio, and Tennessee. As of the publication date of this article, the mandate remains in effect in all other states.

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