

Blog Post

Federal Contractors Face Dec. 8 Vaccination Deadline

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Federal contractors covered by President Biden’s recent [Executive Order 14042](#) must ensure that covered employees are fully vaccinated for COVID-19 no later than December 8, 2021, subject to applicable exceptions, pursuant to new [Guidance](#) published by the Safer Federal Workforce Task Force (Task Force). The Guidance was issued pursuant to President Biden’s [COVID-19 Action Plan](#) and Executive Order 14042, which we [blogged](#) about last month. All new covered contracts entered into on or after October 15, 2021 must incorporate the terms of the Guidance.

The 14-page Guidance provides definitions of relevant terms, and explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance. A summary of the Task Force Guidance and exceptions is provided below:

- **Covered contract.** *Covered contracts and contract-like instruments* are those contracts related to federal property or involving services or construction. Specifically, the term “contract” has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021), and so is interpreted

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broadly for services but does not, for instance, apply to contracts solely for the provision of products.

- **Vaccines.** Except in limited circumstances where an employee is legally entitled to accommodation, *covered contractor employees*, which notably includes those working on covered contracts remotely at private residences, must be fully vaccinated after December 8, 2021. The Guidance expressly notes that a covered contractor “may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.” After December 8, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.
- **Testing.** Unlike the Biden COVID-19 Action Plan’s coming vaccine mandate for employers with 100 or more employees, weekly testing is not expressly authorized as an alternative to vaccination.
- **Proof of vaccination.** An employee is considered fully vaccinated two weeks after receiving the final dose in a one- or two-dose series currently approved by the U.S. Food and Drug Administration or listed for emergency use by the World Health Organization (such as AstraZeneca/Oxford). Covered contractors must require and verify proof of vaccination status and may, for instance, allow covered employees to

prove status by providing a digital photograph of record of immunization or Vaccination Record Card. Additionally, a covered contractor cannot accept a recent antibody test from a covered contractor employee to prove vaccination status.

- **Contract clause.** *Covered contracts and contract-like instruments* (i.e., those related to federal property or involving services or construction) must incorporate a clause specifying that *covered contractors* (i.e., prime contractor/subcontractor at any tier who is a party to a covered contract) shall, for the duration of the contract, comply with all relevant guidance published by the Task Force.
- **Timeline for clause compliance.** The Guidance expressly notes that, “[f]or contracts awarded prior to October 15 where performance is ongoing, the clause must be incorporated at the point at which an option is exercised or an extension is made. For new contracts, the clause must be incorporated into contracts awarded on or after November 14. Between October 15 and November 14, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after October 15.”
- **Covered contractors, employees and workplaces.** The Task Force interprets Executive Order 14042 as applying to any full-time or part-time employee of a covered contractor, regardless of whether such employees work on or *in connection with* the federal contract since indirect support like billing, human resources, and legal review are considered covered. *Covered workplace locations* include those 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.
- **Engineering controls.** 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. Again, private residences are not covered workplaces and so while covered remote workers need not comply with the mask and distancing requirement, such workers are considered *covered contractor employees* and so must comply with the vaccination requirement (i.e., be fully vaccinated after December 8, 2021) unless legally entitled to an accommodation.

- **Designated person(s).** Covered contractors must designate a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.
- **Non-covered contracts.** Federal agencies and contractors are also “strongly encouraged” to incorporate similar vaccination requirements into non-covered contracts. Accordingly, contractors without covered contracts (such as subcontracts solely for products) may encounter clause incorporation scenarios as well.

The Guidance also provides answers to 21 Frequently Asked Questions concerning implementation of Vaccination and Safety Protocols, Scope and Applicability, and Compliance. The FAQs address issues such as visitor signage, lack of need to provide onsite vaccination, replacing lost employee vaccination documentation, 60-day limited exception for Federal agencies with urgent, mission-critical need, application to outdoor facilities, future updates, periods of contract performance, flow-down tier requirements for prime and subcontractors, application to small businesses, state/local preemption, and an upcoming rulemaking by the Federal Acquisition Regulatory (FAR) Council for clause incorporation under FAR-based contracts and cross-agency application.

For assistance complying with the Guidance or addressing other vaccine policy issues, please contact your Akerman attorney.

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