



Federal Contractors Subject to New COVID-19 Vaccine Mandates

Insights

9.10.21

As part of the Biden administration's "Path Out of the Pandemic" plan released yesterday, President Biden issued an executive order adding COVID-19 vaccination requirements affecting nearly all federal contractors. The new mandates are significantly more aggressive than the federal employee COVID-19 safety protocols issued on July 29 that simply required vaccination certification or testing for "every federal government employee and onsite contractor." Onsite contractors who cannot confirm they are fully vaccinated will still have to follow safety protocols (mask wearing, maintaining workplace social distancing, complying with weekly or twice weekly COVID-19 testing, and limiting official travel). But now most federal contractors – regardless of whether they have employees working on federal property – will soon be required to follow new vaccine mandate requirements, effective with contracts with pending solicitations or entered into on or after October 15. What do federal contractors need to know about these significant new developments?

Which Federal Contractors are Impacted?

Effective immediately, the new rules will apply to any new contract or new contract-like instrument, including a new solicitation, extension, or renewal or exercise of an option, provided it is:

- a procurement contract for services, construction or a leasehold in real property;
- a contract covered by the Service Contract Act (SCA);
- a contract for concessions, including concessions excluded generally under the SCA; or
- a contract in connection with federal property or lands offering services for federal employees, dependents, or the general public.

Contracts NOT covered include:

- grants;
- Indian Tribes contracts or contract-like instruments;
- those with a value equal to or less than the FAR simplified acquisition threshold;
- agreements involving employees performing work outside the U.S.; and
- subcontracts solely for the provision of products.

In addition, federal contractors or subcontractors with Walsh-Healey Act contracts (that is, manufacturing contracts) are apparently not covered by the new executive order.

What are the Requirements?

Detailed requirements should follow by September 24, when the Safer Federal Workforce Taskforce issues further “Guidance” specifying the exact requirements for federal contractors. This Guidance must be approved by the Director of the Office of Management and Budget.

Meanwhile, the executive order itself requires that all applicable contracts shall include a flow-down clause to incorporate the safety protocol requirements in lower-tier subcontracts. The 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 Guidance at any workplace locations where an individual is “working on or in connection with a Federal Government contract or contract-like instrument.”

Thus, these requirements may also apply to remote employees, if they are working on qualifying contracts, although the remote employee issue should be made clear in the Guidance.

Although the Executive Order is effective immediately, certain requirements will apply to new contracts, renewals, and exercises of options on or after October 15, 2021. However, federal contractors with pending solicitations or existing contracts are “strongly encouraged, to the extent permitted by law” to follow the new safety protocols specified in the Guidance.

What Should You Do Next?

- Evaluate if any of these requirements apply to your workforce.
- Consider related logistics, including compensation issues that may be implicated for the time spent traveling to and receiving the vaccine or testing and any related reimbursement costs. Make sure you also understand when employees must be paid for their time, such as supplemental paid sick leave for time taken to receive the vaccine or to recover from vaccine side effects. Consider who is responsible for these costs. (Covered federal contractors are also those subject to the federal paid sick leave requirements,)
- Determine if you will require employees to provide some other form of proof of vaccination outside of the attestation form required by the Federal Government, and how proof of vaccination will be collected, kept, and who will have access to the confidential information.
- Be mindful of privacy laws when collecting and/or sharing information about employees.
- Review your accommodations policies and procedures regarding vaccinations, testing, and mask wearing and be prepared to engage in this process with employees and how you will consider handling requests from government agencies that only fully vaccinated workers will be allowed onsite.

- Watch for the specific Guidance requirements, due to arrive on September 24.
- For more information applicable to all employers across the country with 100 or more employees, we recommend you visit our [5-Step Plan for Employers After President Biden Announces Workplace Vaccine Mandates](#).

We will monitor these developments and provide updates, especially after the specific Guidance requirements are released. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Affirmative Action and Federal Contract Compliance Practice Group](#).