



What Federal Contractors Need to Know Now About the New Vaccine Mandate

Catherine Barbieri, Gray Mateo-Harris & Kelsey Schmidt | Fox Rothschild

As the pandemic continues into its second year, federal and state governments are promulgating rules, regulations and mandates almost every day to combat COVID-19. On September 9, 2021, the Biden Administration issued one of its most sweeping federal mandates through an [Executive Order](#), mandating vaccinations for all federal contractors (the “vaccine mandate”). While the Executive Order has several components, which address federal contractors and health care workers and direct OSHA to develop emergency rules for private employers, this article will focus on the vaccine mandate for federal contractors.

The vaccine mandate for federal contractors is part of President Biden’s “Covid-19 Action Plan, Path Out of the Pandemic Plan,” which includes the following goals:

1. Vaccinating the unvaccinated
2. Further protecting the vaccinated
3. Keeping schools safely open
4. Increasing testing and requiring masking
5. Protecting our economic recovery
6. Improving care for those with COVID-19

The objective of the vaccine mandate is to decrease worker absences, reduce labor costs and improve efficiency among federal contractors and subcontractors. The Biden Administration issued guidance on September 24, 2021, titled the [Safer Federal Workforce Task Force](#) (“guidance”), that clarified what federal covered contractors are responsible for to ensure that their contractor employees comply with the vaccine mandate.

Who Is Covered by the Vaccine Mandate?

The vaccine mandate covers any full-time or part-time employee working “on or in connection with” a government

contract. This also includes employees working remotely in connection with a covered contract and employees who may be indirectly engaged in supporting the contract (i.e., information technology, human resources, legal review). The FAQs published with the guidance state that employees working on a covered contract *remotely*, even if they never work at a covered contractor workplace or federal workplace during the performance of the contract, are covered employees. Therefore, while the employee’s residence is not covered, the remote employee must be vaccinated. In addition, based on the vaccine mandate’s definition of a covered contractor, many employees who are not working on or in connection with any federal contract will still be subject to the requirements of the vaccine mandate because they share a workspace with another employee who is working on or in connection with a federal contract or subcontract.

What Federal Contracts are Covered by the Vaccine Mandates?

The vaccine mandate’s requirements and other safety initiatives will be applied to any new or renewed federal contract or contract-like instrument if the contract is (1) for services; (2) for construction; (3) for a leasehold interest in real property; or (4) in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public. The contract or contract-like instrument must include a clause that states that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workforce locations published by the guidance (the “clause”).

For federal contracts awarded before October 15, 2021, and if performance is ongoing, the requirements will be mandated when there is an option exercised or the contract



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is extended. For contracts entered into from October 15, 2021, to November 14, 2021, the solicitation will include the requirements, and agencies are encouraged to include the clause in contracts awarded during this time but are not required to do so unless the solicitation for such contract was issued on or after October 15, 2021. From November 14, 2021, forward, all new contracts must include the requirements. The vaccine mandate does not apply to: grants, contracts or subcontracts below \$250,000; contracts or agreements with Indian tribes; or contracts if performance is outside the United States or its outlying areas.

The Federal Acquisition Regulatory Council (FAR Council) was directed to manage the contractual process. While the vaccine mandate requires that all federal contracts specify that the contractor or subcontractor will comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force, until the FAR Council decides on the language, employers will not see the applicable language in their federal contracts.

What Are the Vaccine Mandate Requirements?

Parties that contract with the federal government must provide adequate COVID-19 safeguards to their workers performing on or in connection with a federal government contract or contract-like instruments. Among other things, the vaccine mandate requires vaccinations, along with masking and physical distancing requirements, as follows:

Requiring COVID-19 vaccination, except with a legally entitled accommodation

Federal contractors must be fully vaccinated by December 8, 2021. The federal contractor must also review employee documentation (including digital copies of

documentation) to prove the employees' vaccination status. Such proof can include:

- Copy of the record of immunization from a health care provider or pharmacy;
- Copy of the COVID-19 vaccination (CDC Form);
- Copy of medical records documenting the vaccination;
- Copy of immunization records from a public health or state immunization information system; or
- Copy of any other official documentation verifying vaccination status and including information about the vaccine name, dates of administration and name of health care professional or clinic administering vaccine.

Federal contractors may be required to provide an accommodation to an employee who communicates that they are not vaccinated *because of a disability or because of a sincerely held religious belief, practice or observance*. A federal contractor should review and consider what accommodation, if any, it must offer. Requests for "medical accommodation" or "medical exceptions" should be treated as requests for a disability accommodation. Importantly, there is *no alternative testing option* for employees who choose to forgo vaccination. While the previous guidance issued on July 29, 2021, allowed for testing in lieu of providing vaccination status, the vaccine mandate requires vaccinations unless the employee is entitled to an accommodation. According to the [U.S. Office of Personnel Management](#), "employees who refuse to be vaccinated or provide proof of vaccination are subject to disciplinary measures, up to and including removal or termination from federal service."

If a federal agency has an urgent need for a contractor



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to begin work prior to becoming fully vaccinated, the agency head may approve an exception, but the contractor must ensure the contract employees are fully vaccinated *within 60 days of beginning work*. Federal contractors are encouraged to implement similar vaccine requirements with their nongovernment contractors who perform work at the same location but are not involved with a federal contract (i.e., contracts relating to the provision of food services, onsite security or groundskeeping services).

Requiring masking and physical distancing

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Federal contractors must ensure the employees comply with masking and physical distancing requirements applicable to individuals who are not fully vaccinated. Federal contractors must require individuals in contractor workplaces who are required to wear a mask to wear a mask *correctly* over both their mouth and nose; and wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments and conference rooms). Individuals who are not fully vaccinated must wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance. Federal contractors may provide for exceptions to mask wearing and physical distancing:

- If an individual is alone with floor to ceiling walls and a closed door;
- For a limited time when eating or drinking while maintaining appropriate distance;

- If a mask would get wet;
- If the work involves high intensity activities that would result in difficulty breathing; or
- If a health or safety risk is determined by a workplace risk assessment.

Fully vaccinated people do not need to physically distance regardless of the level of transmission. Unvaccinated people, to the extent practicable, should maintain a distance of at least six feet from others at all times.

Designating an individual to coordinate COVID-19 workplace safety efforts

Federal contractors must designate a person to coordinate COVID-19 workplace safety efforts. This individual is responsible for:

- Ensuring information on required COVID-19 workplace safety protocols is provided to employees and all other individuals likely to be present at covered contractor workplaces, including by:
 - Communicating the required workplace safety protocol and related policies by email, websites, memorandum, flyers or other means.
 - Posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in a readily understandable manner, which includes communicating COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present.
 - Ensuring that employees comply with the requirements related to the showing or provision of proper vaccination documentation.



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Recommended Action

While the vaccine mandate and the corresponding guidance provided important information, there are still pertinent details that were left vague and/or unaddressed. As the vaccine mandate develops and is implemented, we expect and hope further guidelines will be issued. In the meantime, below are some proposed next steps for discerning employers:

- Determine if the vaccine mandate applies to your company and its worksites given the nuanced analysis set forth in the guidance;
- Designate a company representative to carry out the vaccine mandate requirements and train employees on the same;
- Plan how you will collect and store confidential vaccine information, including centralizing the collection process and segregating such information separately from employee personnel files;
- Determine how you will communicate the requirements to your workforce, including strategizing your response to those who oppose compliance with such requirements;
- Review accommodation policies and prepare

managers and human resources professionals for the necessary interactive process;

- Develop policies for noncompliance to be distributed and enforced consistently; and
- Monitor further guidance and solicitation and contract clauses in any future contracts or renewals.

Employers that invest now in the above steps will be better positioned to ensure their workplace promptly achieves compliance with the vaccine mandate.

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