

Alert

September 28, 2021



White House Task Force: Covered Employees of Federal Contractors Must Be Vaccinated by December 8

On September 24, 2021, the Safer Federal Workforce Task Force (task force) issued its anticipated guidance for federal contractors and subcontractors pursuant to President Biden's Executive Order 14042 (the EO). Most significantly, the task force imposed a deadline of **December 8, 2021**, for all "covered employees" of federal contractors to be fully vaccinated. As discussed in our [previous alert](#), the EO and this subsequent guidance are an aggressive expansion of the administration's goals of requiring federal contractors working in connection with federal contracts to receive a COVID-19 vaccine.

In addition to the December 8 vaccination deadline, the task force's guidance includes a variety of definitions, explanations, protocols, and limited exemptions related to the vaccination requirement for federal contractors. Below is a summary of the most significant aspects of the guidance for federal contractors.

Key Definitions

The task force issued broad definitions for covered contractors, covered contractor employees, and covered contract workplaces, subject to the guidance.

- A "covered contractor" is "a prime contractor or subcontractor at any tier who is party to a covered contract." The task force defined "covered contract" as the types of contracts that were covered by the EO, which were discussed in our [previous alert](#). The task force does not expand the scope of applicable contracts but it does strongly encourage agencies to incorporate these new requirements in contracts that were not directly addressed by the EO, as well as in existing contracts prior to the date upon which the EO requires compliance.
- A "covered contractor employee" means "any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor working place." Two aspects of this definition are noteworthy. First, it includes employees of covered contractors who are not themselves working on or in connection with a covered contract, but nonetheless working at a covered facility. Second, it includes employees who are not directly engaged in performing specific work called for by the covered contract (e.g., billing, legal, HR), but who still perform duties necessary to the performance of the covered contract. Notably, for this class of employees, the task force did not clarify whether the 20 percent threshold that applies to minimum wage requirements for employees of federal contractors would also apply to the vaccine requirements.
- A "covered contractor workplace" is 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. Notably, a covered contractor workplace does not include a covered contractor employee's residence.

New Requirements for Contractors

The task force established three new categories of requirements for covered contractors, including:



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Related Practice Areas

- Government Contracts

1. Vaccination of all covered contractor employees (absent limited exceptions for medical or religious reasons) by December 8, 2021, or thereafter on the first date of the period of performance under a newly awarded contract or exercised option.
2. Compliance with CDC masking and physical distancing requirements by covered contractor employees and visitors at covered contractor workplaces.
3. Designating a person(s) to coordinate COVID-19 safety efforts at covered contractor workplaces.

All of the requirements detailed in the guidance must also be flowed down to all lower-tier subcontractors (except for subcontracts solely for the provision of products).

The guidance provides that covered contractors are responsible for reviewing requests for accommodations for medical or religious reasons and determining what, if any, accommodations to offer, but it does not offer any specific instructions on how contractors should do so.

Records of Vaccination and Accommodations

The guidance requires contractors to review and approve of documentation provided by employees to verify vaccination status. The guidance provides several options for such documentation, including a record of immunizations from pharmacies or health providers, a vaccination record card from the CDC, or digital copies of other official documentation.

Masking and Physical Distancing

Contractors will be required to ensure that both employees and visitors comply with published CDC guidance on masking and physical distancing while at a covered contractor workplace. In areas of “high or substantial community transmission,” fully vaccinated persons must wear masks in an indoor setting, while unvaccinated persons must wear a mask indoors regardless of community transmission. The mask requirements do not apply when employees are working remotely from their residences.

Significantly, the guidance requires contractors to review the [CDC COVID-19 Data Tracker County View website](#) on a **weekly** basis to determine the level of community spread in every covered workplace. The guidance notes that contractors should immediately increase protective protocols when community spread increases from low/moderate to substantial/high, but that contractors can only reduce such protocols after community transmission is at a reduced level for two consecutive weeks.

For larger contractors in particular, this requirement creates a significant burden for personnel to review workplace locations on a county-by-county basis to determine appropriate workplace protocols in a given week.

Remote Workers

The guidance specifies that contractor employees who work remotely from their residence must comply with the vaccine requirement even if that employee does not work at a covered contractor workplace for the duration of the requirement. The guidance notes that the masking and physical distancing requirements would not apply to that employee’s residence.

Conflict with Local Guidance

The guidance specifically addresses instances in which states or localities seek to either prohibit compliance with safety protocols or, alternatively, provide more robust safety protocols. For the former, the guidance reiterates that it is promulgated pursuant to federal law and therefore supersedes state or local requirements or prohibitions. On the latter, the guidance does not excuse noncompliance with more protective protocols established by states and localities.

Key Dates

The Federal Acquisition Regulations (FAR) Council is preparing to conduct a rulemaking to amend the FAR to include a clause that will require contractors to comply with the task force’s guidance. By **October 8**, the FAR Council will publish the clause and recommend that agencies incorporate the clause into existing covered contracts that are extended or where an option is exercised

beginning **October 15**. The new requirements must be incorporated into all new covered contracts awarded on or after **November 14**.
