

Federal Contractors Subject to Vaccination Requirement

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A new executive order from President Joe Biden requiring most federal contractors to be COVID-19 vaccinated erases previous, more lenient guidance for federal contract workers.

The order is part of a large package of vaccination mandates for employers to follow sent down from the White House late last week. The [11-page memorandum](#) and [executive order](#) is applicable to federal government contractors. The two supersede previous July guidance that allowed for federal employees and contractors to opt out of a vaccine mandate if they wore masks, socially distanced, and were tested at least once a week.

The memorandum requires vaccinations for all federal contractors that contract with the federal government.

The order provides that new federal government contracts must include a provision to require a general contractor or subcontractor at any tier to comply with all guidance issued by the Safer Federal Workforce Task Force. The task force has been directed to devise the new guidance by September 24.

The order applies to a contractor working at any "workplace location on or in connection with the federal government." The task force is expected to determine what a "workplace location" is. Work "on" a federal contract means work required by the contract. Work "in connection with" a federal contract means work not specified in the contract but inherently essential to complete the contract, including custodial or maintenance work.

The order applies to:

- Any new contract
- A bid for a contract
- An extension or renewal of an existing contract
- Exercise of an option on an existing contract

The order does not apply to:

- Grants
- Contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, which is currently set at \$250,000, subject to exceptions
- Employees who perform work outside the United States
- Subcontracts solely for the provision of products

The memorandum itself requires vaccination. The executive order directs the task force to embrace that requirement and add additional guidance and policies where it sees fit. The task force must issue its guidance by September 24. It must provide protocols, explanations of compliance and any exceptions.

Since the executive order extends to work "in connection with" the federal government, it is possible that contractor employees who do both private and federal work, may have employees subject to the mandate who have no direct involvement with any federal work. Or, potentially, employees who work "in connection with" a federal contract may not be covered unless more than 20% of their work time is spent on performing contract-related services, which is the threshold for the U.S. Department of Labor's minimum wage contractor regulations. These clarifications should soon follow in the September 24 release by the task force. The order provides that the task force should permit only exceptions "required by applicable law." For now, applicable law likely includes only medical or religious accommodations that are protected by federal statutes. The task force could issue more exceptions in its September 24 release.

If you have any questions regarding your new potential applicability to the vaccine mandate or task force guidelines, please contact [Jennifer Craighead Carey](#), [Caleb Setlock](#) or any member of the [Barley Snyder Employment Practice Group](#).

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The views expressed in this alert are those of the individual author and do not necessarily reflect the views of the firm or the firm's clients. The response to the COVID-19 pandemic is particularly challenging, evolving and, in many cases, can be controversial. Any views expressed in this alert are not intended to advocate for or endorse a particular governmental response to the pandemic.

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