

## Guidance Released for Federal Contractors

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Federal contractors must be vaccinated by December to work for the U.S. government, according to guidance released late last week.

Through an [executive order on September 9](#), President Joe Biden directed a federal task force to issue guidance requiring that all federal contractors must be vaccinated to continue working on a government job.

The [guidance released Friday](#) calls for the mandatory vaccinations along with a number of additional requirements:

**Vaccination:** As expected, the guidance mandates vaccinations for covered employees. The only exception is for employees legally entitled to accommodations through a medical disability or religious exemption. Employers are responsible for determining exemption eligibility. Covered employees who aren't exempt must be fully vaccinated by December 8, and there is no alternative testing option. Contractors must ensure employees are vaccinated by checking authorized vaccination records, and attestations alone are not sufficient.

**Mask and social distancing:** All individuals must comply with the Centers for Disease Control and Prevention guidance for masks and social distancing. Fully vaccinated employees must still wear masks in indoor settings in areas of high or substantial community transmission, but they are not required to socially distance. The [CDC's COVID Data Tracker](#) determines the community's risk level. On the other hand, employees that aren't fully vaccinated and aren't exempt must social distance and wear a mask indoors and in populated outdoor settings, regardless of the level of community transmission.

**Notice to Employees and Visitors:** Contractors must designate a person(s) to implement the guidance and collect vaccination records. The designated individual(s) must ensure that information on COVID-19 workplace safety is distributed to employees and visitors through postage, emails, memos, flyers or by other means. For contractors with office visitors, signage should be posted, upon entrance, which provides information on safety requirements for both fully and not fully vaccinated individuals.

**Flow-down Clause:** The prime contractor is required to incorporate these provisions into all lower-tier subcontracts.

Covered contractors are prime contractors or subcontractors engaged in federal contract work and performing a covered contract, which includes:

- A procurement contract
- A contract for services

- A contract under the Service Contract Act
- A contract for concessions
- Any contract in connection with federal property or lands and related to offering services for federal employees or the public

Non-covered contracts include contracts for less than \$250,000 or subcontracts solely for the provision of products. However, these contracts may nonetheless have the guidance enforced through upcoming changes to the Federal Acquisition Regulation or by federal agencies themselves.

Covered employees are full-time and part-time employees if they are working "on or in connection with a contract" or working at a "contractor workplace location."

"On or in connection with a contract" includes not only the employees directly involved but also those indirectly involved, such as HR, billing and legal employees. The vaccination requirement applies to remote workers, but not the masking nor social distancing.

A "contractor workplace location" includes both the contractor's indoor and outdoor workplace and the federal workplace.

For federal contractors with campus environments, other employees can avoid being "covered" only if the contractor can affirmatively determine the employee will not come into contact with covered employees anywhere on the premises, including in restrooms, meeting rooms, stairways, parking garages, etc. It also exempts third-party contracts with food services, onsite security or groundskeeping from the vaccination requirement, though federal contractors are encouraged to incorporate the guidance into their contracts.

For federal contractors, required compliance with this guidance does not stop here. If the task force ever amends the guidance or supplements it in any way, contractors will be required to comply with those changes. Importantly, federal contractors also must comply with the federal Occupational Safety and Health Administration regulations and its upcoming Emergency Temporary Standard for private employers with more than 100 employees. Federal agencies themselves are strongly encouraged to incorporate this guidance into all non-covered contracts, specifically including those under \$250,000 or subcontracts for the provision of products. All federal contractors are still expected to follow applicable state and local laws as well.

If you have any questions regarding the applicability of the guidance or your compliance efforts, please contact [Jennifer Craighead Carey](#), [Caleb Setlock](#), or [any member of the Barley Snyder Employment Practice Group](#).

**DISCLAIMER:** The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

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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**Jennifer Craighead Carey**

Managing Partner

Tel: (717) 399-1523

Email: [jcraighead@barley.com](mailto:jcraighead@barley.com)



**Caleb P. Setlock**

Associate

Tel: (717) 399-1567

Email: [csetlock@barley.com](mailto:csetlock@barley.com)