



# Federal Contractors Face Vaccine Mandate by December 8: An Employer's Plan for Success

Insights

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The Safer Federal Workforce Task Force just issued new COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors, which provides further detail and guidance on the vaccine mandate and COVID-19 safety protocols affecting nearly all federal contractors. Besides requiring your employees to be fully vaccinated by December 8, the new guidance imposes other pandemic-related workplace safety obligations. Here is an employer's plan for success as it relates to the new federal contractor requirements issued on September 24.

## What is Required?

In addition to the mandatory inclusion of a flow-down clause requiring compliance with the guidance, the guidance imposes three key requirements:

- A vaccine mandate requiring full vaccination for employees of covered federal contractors by December 8, with limited exceptions for those legally entitled to an accommodation (prior COVID-19 infection or antibody tests are not accepted as substitutes);
- Mask and physical distancing requirements at covered contractor worksites (including for employees, visitors and others); and
- A requirement that contractors designate a person or persons to coordinate COVID-19 workplace safety efforts at their workplaces.

## Which Federal Contractors Are Covered?

- Not all federal contracts will be covered. In order to be covered under the federal contractor vaccine guidance, the contract in question (or a "contract-like" instrument that is not a grant) must be performed in the U.S., in whole or in part, and must be a:
- Procurement contract for construction covered by the Davis Bacon Act (DBA);
- Contract for services under the Service Contract Act (SCA);
- Concessions contract under the SCA; or
- Contract in connection with federal contracts or land offering services to federal employees, their dependents, or the general public.

The term “contract or contract-like instrument” is interpreted broadly. It includes, but is not limited to a purchase order, basic ordering agreement, letter agreement, bi-lateral options exercise, etc.

### **When Will the Requirements Clause be Included in the Contract or Contract-Like Instrument?**

For contracts awarded before October 15 and if performance is ongoing, the requirements will be incorporated when there is an option exercised or extension made. For contracts made from October 15 to November 14, the solicitation will include the requirements. From November 14 onward, the requirements must be included in all new contracts.

### **What You Need to Know About the Vaccine Mandate?**

All covered contractor employees, including those who previously had COVID-19 and including those who work outside or work remotely, must be fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation for a disability (including medical conditions) or sincerely held religious belief, practice, or observance.

Covered employees must be fully vaccinated by December 8, so the last dose must be taken no later than November 24 (the day before Thanksgiving) to meet this deadline.

After December 8, covered employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract. There is a limited exception for an agency head to approve a 60-day exception for “urgent, mission-critical need” for a covered employee to begin work on a contract or at a worksite before becoming fully vaccinated.

Covered contractors must verify an employee’s vaccination status by obtaining proof and cannot document an employee’s vaccination status by way of self-attestation. Covered contractors must require covered contractor employees to show or provide one of the following:

- a copy of the record of immunization from a health care provider or pharmacy;
- a copy of the COVID-19 Vaccination Record Card;
- a copy of medical records documenting the vaccination;
- a copy of immunization records from a public health or State immunization information system;  
or
- a copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine.

Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of

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## **What are the Masking, Physical Distancing and Other Requirements?**

At a covered contractor worksite or at a federal workplace — including outdoor workspaces — all individuals including covered contractor employees and visitors must comply with published CDC guidance for masking and physical distancing at a covered contractor workplace. However, those who work remotely do not have to comply with the physical distancing or masking requirements at their residence.

In areas of high or substantial community transmission (which is currently most places in the United States) all individuals, regardless of vaccination status, must wear a mask indoors, subject to limited exceptions (e.g., alone in a room, while eating or drinking, etc.). In areas of low or moderate community transmission, those who are fully vaccinated are generally exempt from masking in most settings.

Those who are fully vaccinated do not need to physically distance regardless of the level of transmission in the area.

Those who are not fully vaccinated must wear a mask indoors and in certain outdoor settings that involve crowded outdoor settings and sustained close contact with other people who are not fully vaccinated, regardless of the level of community transmission in the area. They should also maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces, as practicable.

Covered contractors must check the CDC COVID-19 Data Tracker County View website for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. When the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with the Guidance and the workplace safety protocols detailed in the Guidance at covered contractor workplaces.

For visitors, covered contractors should post signage providing information on safety protocols for fully vaccinated and not fully vaccinated individuals.

## **What if a State or Locality Prohibits Compliance with Any of The Workplace Safety Protocols?**

The Guidance expressly states that the requirements are pursuant to federal law and supersede any contrary State or local law or ordinance. However, any State or locality may implement more protective measures.

## **Do You Have to Comply with The Guidance if Subject to OSHA's Forthcoming ETS?**

Yes. Covered contractors must comply with these requirements regardless of whether they are subject to other workplace safety standards, including the forthcoming rule from OSHA.

## **What if an Employee Objects to the Vaccine or Masking Requirements?**

There are only limited exceptions for those who have a disability, medical condition or sincerely held religious belief, practice or observance. If an employee asserts an objection based on a disability, medical condition, or sincerely held religious belief, practice or observance, it is the covered contractor's responsibility to engage in the interactive process to determine what, if any, accommodation can be offered. If the agency is a joint employer, then the interactive process and evaluation of reasonable accommodations should be evaluated with the agency.

## **Is Testing Still Allowed in Lieu of Vaccination?**

No. Although the July 29 protocols allowed for testing in lieu of providing vaccination status, this guidance mandates vaccinations for COVID-19, unless a covered employee is legally entitled to an accommodation for a disability (including medical conditions) or sincerely held religious belief, practice or observance. Regular testing may be a reasonable accommodation for those who have an approved exemption.

## **What Should You Do Next?**

**Here is an eight-step plan for success that federal contractors should implement immediately in order to ensure compliance with the new guidance:**

- Evaluate if any of these requirements apply to your workforce.
- Designate a company representative to implement the Guidance.
- Determine how you will collect proof of vaccination, how proof of vaccination will be collected and kept, and who will have access to the confidential information.
- Communicate the new requirements to your workforce, the compliance deadlines, and the process for requesting an exemption.
- Consider related logistics, including compensation issues that may be implicated for the time spent traveling to and receiving the vaccine and any related reimbursement costs. Make sure you also understand when employees must be paid for their time, such as supplemental paid sick

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).

- 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.
- Ensure appropriate signage and notices regarding safety protocols are posted in the workplace and provided to employees.

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](#).

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