

Biden Administration Releases New Guidance for Vaccine Mandate Covering Federal Contractors

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On September 24, 2021, the Biden administration clarified its September 9 Executive Order (the “Mandate”), announcing that employees of federal contractors and subcontractors will be required to be fully vaccinated against COVID-19 by December 8, 2021 even if the employees are not working directly on a government contract. An overview and main highlights of this new guidance are provided below:

- **Overview.** The vaccine Mandate covers part- and full-time employees of federal prime contractors and subcontractors at any tier of the supply chain who are working either directly on or “in connection with” a contract, which includes indirect support “such as human resources, billing, and legal review.”
 - “Covered contractor workplaces” where any covered worker is “likely to be present” during the course of a contract — both federal workplaces and locations controlled by the contractor itself, according to the guidance. The task force says that includes outdoor work sites and applies to all employees at those locations even if their work is not connected to a federal contract, unless they are fully separated from those working on a contract and will never be able to interact.
 - The term “contractor” will also be broadly applied to those who hold “contracts and contract-like instruments,” such as leases and cooperative agreements.
 - Any fully remote workers, as well as employees who have previously been infected with COVID-19, are included in the Mandate.
 - The Mandate overrides any state or local law or ordinance that would prohibit compliance, although “more protective” local standards will continue to apply.
 - Accommodations are available for both the vaccine and mask mandates allowed for disabilities, including medical conditions, or a “sincerely held religious belief, practice, or observance.”
 - Will not cover subcontracts for “products,” and the new guidance suggests that prime contracts for such products may be exempted as well, subject to the particular implementing contract clauses.
- **Vaccination**
 - Covered contractors are required to have all covered employees fully vaccinated.

- The deadline for full vaccination is December 8 or the first day of performance on a new contract, which means contractors must have received their final shot at least two weeks beforehand.
- Employees are responsible for providing documented proof of vaccination to employer.
- **Mask Requirement and Physical Distancing**
 - Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at covered contractor workplaces.
 - Masks will be required in areas with “high or substantial community transmission.”
 - Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings regardless of the level of community transmission in the area.
 - To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and workplaces. This does not apply to covered contractors’ physical residences.
- **Covid-19 Coordinator Designation**
 - Covered contractors must designate a person or persons to coordinate implementation of and compliance with these workplace safety protocols at covered contractor workplaces. Their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.
- **Contract Solicitations**
 - Beginning on October 15, 2021, a related clause will be included in all new contract solicitations and will apply to new contracts issued from November 14, 2021 onward.
 - For all contracts in place prior to October 15, 2021, the Mandate will apply if and when that contract is extended or an option is exercised.
 - The Federal Acquisition Regulatory Council will develop a model contract clause by October 8, 2021, which will later be followed later by a related rule.

For any questions related to these developments, please contact Bryant E. Gardner (BGardner@winston.com), Allison N. Skopec (ASkopec@winston.com), or your Winston relationship attorney.

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