



**PHILLIPS LYTLE LLP CLIENT ALERT**  
**FOR BNHRA MEMBERS**  
**LABOR & EMPLOYMENT**



**SEPTEMBER 2021**

## *President Biden Announces Private Sector and Federal Contractor COVID-19 Vaccination Requirements*

**On Thursday, September 9, 2021, President Biden announced as part of his six-pronged national strategy to combat COVID-19 that he has directed the Occupational Safety and Health Administration (OSHA) to develop and issue an Emergency Temporary Standard (“ETS”). It will require all private employers with 100 or more employees to ensure that their workforce is fully vaccinated or will require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before reporting to work. It is estimated that the ETS will impact over 80 million workers. The President’s announcement also stated that the ETS will include a requirement that covered employers provide paid time off for the time required for employees to get vaccinated or to recover if they experience an adverse reaction to the vaccine.**

The President also announced that he has signed an [Executive Order](#) (“EO”) which is intended to extend the mandatory vaccination requirement for federal workers to federal contractor employees. Although the EO does not expressly mandate employee vaccinations, it requires federal contractors to comply with workplace guidance published by the Safer Federal Workforce Task Force (“Task Force”) which is expected to include a vaccination requirement. The EO also states that it “shall apply to any workplace locations (as specified by the Task Force Guidance) in which an individual is working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).” Thus, the Task Force Guidance, when issued, will apply to a federal contractor’s entire workforce.

The EO will apply to any new contract or contract-like instrument, as well as any “new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument” if it is a:

- Procurement contract or contract-like instrument for services, construction or a leasehold interest in real property;
- Contract or contract-like instrument for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq.;
- Contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); and
- Contract or contract-like instrument entered into with the Federal Government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

The EO does not apply to:

- Grants;
- Contracts, contract-like instruments or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended;
- Contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as that term is defined in section 2.101 of the Federal Acquisition Regulation;
- Employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or
- Subcontracts solely for the provision of products.



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The Task Force plans to issue its guidance/proposed clause by September 24, 2021. Contracting agencies must take steps by October 8, 2021, to include the clause in covered contracts. Additionally, the clause should begin appearing in covered contracts entered into on or after October 15, 2021.

Employers with 100 or more employees and federal contractors should take steps to be ready to comply with these requirements when they take effect.

#### Additional Assistance

*For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■*



**Albany** Omni Plaza 30 South Pearl Street Albany, NY 12207-1537 (518) 472-1224  
**Buffalo** One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400  
**Chautauqua** 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906  
**Garden City** 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201  
**New York City** 340 Madison Ave 17th Floor New York, NY 10173-1922 (212) 759-4888  
**Rochester** 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000  
**Washington, DC** 1101 Pennsylvania Avenue NW Suite 300 Washington, DC 20004-2514 (202) 617-2700  
**Canada** The Communitel Hub 151 Charles Street West Suite 100 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800