



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



**SEPTEMBER 2021**

## *Federal Government Mandates That Federal Contractor Employees Be Vaccinated Against COVID-19*

The Safer Federal Workforce Task Force (“Task Force”), led by the White House COVID-19 Response Team, issued [guidance](#) on Friday, September 24, 2021 (“Guidance”), mandating that employees of covered federal contractors be fully vaccinated against COVID-19 by December 8, 2021 (subject to medical and religious exemptions), and requiring federal contractors to implement masking and physical distancing requirements. The Guidance was required under [Executive Order 14042](#) (“EO”), which was signed by President Biden on September 9 and directed the Task Force to issue COVID-19 safety protocols for federal contractors.

### **WHICH FEDERAL CONTRACTORS MUST COMPLY WITH THE MANDATE?**

The vaccination mandate does not apply to current contracts, but will apply only to covered federal contractors and subcontractors who:

- Enter into a federal contract or contract-like instrument on or after November 14, 2021, which contains a clause requiring compliance with the mandate; or
- Have an existing contract for which an option to extend is exercised on or after October 15, 2021, which modifies the contract to include the clause requiring compliance with the mandate.

The vaccine mandate covers contracts and contract-like instruments for:

- Services, construction or a leasehold interest in real property;
- Services covered by the Service Contract Labor Standards;
- Concessions; and
- Those in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public.

The vaccine mandate does not cover:

- Grants;
- Contracts or contract-like instruments with Indian Tribes;
- Subcontracts solely for the provision of products;
- Contracts and subcontracts equal to or below the simplified acquisition threshold (\$250,000); and
- Employees who perform work outside of the U.S. or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation.

### **REQUIRED SAFETY PROTOCOLS**

The Guidance requires federal contractors and subcontractors with a covered contract to follow these three safety protocols:

1. Ensure that all covered contractor employees are fully vaccinated against COVID-19 no later than December 8, 2021, unless the employee is legally entitled to an accommodation because of medical or religious reasons. (After that date, all covered contractor 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 requirement clause has been incorporated into the covered contract);
2. Ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, and with the specific masking and physical distancing protocols contained in the Guidance as applicable, subject to accommodation for medical and religious reasons; and



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3. Designate a person or persons to coordinate the implementation of, and compliance with, the Guidance and the workplace safety protocols contained within it.

Unlike the forthcoming vaccination requirement to be issued by the Occupational Safety and Health Administration (OSHA), the EO and Guidance do not provide for periodic testing as an alternative to vaccination.

A person is considered fully vaccinated if at least two weeks have passed since they received the second dose in a two-dose vaccine series or since they received a single-dose vaccine.

#### HOW WILL THE FEDERAL GOVERNMENT INCORPORATE THE MANDATE IN CONTRACTS?

The application of the Guidance to government contracts will be phased in by contracting federal agencies as follows:

- **Contracts awarded prior to October 15, 2021**, where performance is ongoing - the requirements must be incorporated at the point at which an option is exercised or an extension is made.
- **New contracts** - the requirements must be incorporated into contracts awarded on or after November 14, 2021.

Between October 15 and November 14, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after October 15.

The Guidance also contains a Frequently Asked Questions (FAQs) section that answers many questions about its implementation that government contractors will likely find helpful. Notably, the FAQs state that a government contractor covered by both the Guidance and a workplace safety standard issued by OSHA must nonetheless comply with the requirements of the Guidance.

Federal contractors should review the EO and Guidance and consult with their labor and employment counsel to ensure that they will be ready to comply with the vaccination mandate.

#### 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. ■*



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