Insights: Alerts

Safer Federal Workforce Task Force Provides COVID-19 Guidance for Federal Contractors

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Resource Center and/or your email for updates.

In early September, President Biden issued a series of Executive Orders ("EO") aimed at combating the COVID-19 pandemic, including an EO on Ensuring Adequate COVID Safety Protocols for Federal Contractors. This EO states that the administration's vaccine mandate is applicable to "any workplace locations" in which an individual is working on or in connection with a Federal Government contract or "contract-like" instrument. The EO directed the Safer Federal Workforce Task Force ("Task Force") to issue guidance outlining "definitions of relevant terms" and "explanations of protocols required of contractors and subcontractors."

The Task Force has now issued its guidance providing much needed clarity to the EO.

First, the guidance defines "a contract or contract-like instrument" as an agreement "between two or more parties creating obligations that are enforceable or otherwise recognizable by law." This definition encompasses all contracts and any subcontracts of any tier thereunder including "procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental services agreements, service agreements, licenses, and permits."

Under the Guidance it is the responsibility of the prime contractor to ensure that the vaccine mandate clause is incorporated into its first-tier subcontracts. First-tier subcontractors are expected to flow the clause down to lower-tier subcontractors in similar fashion so that accountability for compliance is fully established "throughout the Federal contract supply chain for covered subcontractor employees and workplaces for all tiers."

The guidance defines a "workplace location" as any "location where covered contract employees work, including a covered contractor workplace or Federal workplace." A "covered contractor workplace" in turn is defined as a "location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract." An individual working on a covered contract remotely from their residence is still a covered contract employee and is required to comply with the vaccination requirement. However, they do not have to comply with requirements related to masking and distancing while they are working in the home.

The Guidance makes clear that it is the responsibility of all "covered contractors" to ensure that their employees are fully vaccinated and that they must be vaccinated no later than December 8, 2021. Fully vaccinated means two weeks after receiving the second shot of a two shot vaccine or two weeks after a single shot vaccine. Companies should account for this two week period in making plans. A covered contractor may be required to provide an

accommodation to its employees who communicate that they are not vaccinated because of a disability or because of sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Covered contractors are also required to ensure that all individuals, including employees and visitors, comply with published CDC guidance for masking and physical distancing at a “covered contractor workplace.” Covered contractors are also directed to designate a person to coordinate implementation and compliance with the workplace safety protocols outlined in the Guidance. This includes communicating the COVID-19 safety protocols and requirements related to masking and distancing to visitors and all other individuals present at a covered contractor workplace. The designated individual must ensure that covered contractor employees comply with all requirements related to the showing or provision of proper vaccination documentation.

The EO requirements will take effect shortly. Starting October 15, 2021, they must be applied to existing federal contracts at the point when an option is exercised or an extension is made on the contract. The EO requirements must be included in all new contracts awarded after November 14, 2021, and between October 15, 2021 and November 14, 2021, agencies must include the requirements in solicitations.

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