

## COVID-19 Executive Orders Related to Vaccination

In September, President Biden issued Executive Orders regarding Covid vaccination. First, he issued an order regarding vaccination for federal employees; then he announced that OSHA would be developing a rule to require all employers with 100 or more employees to ensure that their workforce is vaccinated or tested at least weekly – this rule has not been issued yet; finally, he issued an order relating to private companies that contracted with the federal government.

As there was some confusion, particularly regarding this final order, the Safer Federal Workforce Task Force issued guidance for federal contractors and subcontractors. The following is a summary of issues which may be a source of confusion for businesses doing business with the federal government:

### **Who does this Order Apply to?**

If you become or are a “covered contractor” you must ensure that all of your employees are fully vaccinated on or before December 8, 2021 (subject to certain religious and medical exemptions). This requirement applies regardless how many people you employ. The 100 employee figure is irrelevant and will be included in the OSHA rule that is still being drafted.

You become a covered contractor if you are a party (either general contractor or tiered subcontractor) to a Federal contract over \$250,000.00 that:

1. was awarded before October 15 but requires ongoing performance and has an extension take place after October 15. You become a covered contractor when “an option is exercised, or an extension is made [after 10/15/2021]”; or
2. is both solicited and awarded after October 15, 2021, but before November 14, 2021; or
3. is awarded on or after November 14, 2021, regardless of when the solicitation occurred.

Note, the vaccine requirements could be included in contracts issued earlier.

So, if you are working under a federally funded contract that was not issued by the federal government, that does not appear to fall within the Order or the guidance, unless the government issuing the contract has adopted parallel requirements.

### **What is required?**

- Ensure that all employees are fully vaccinated no later than December 8, 2021 (except those entitled to accommodations for medical or religious reasons). This means, for employees who elect a two-dose vaccine, the vaccination process must start by early November. After December 8th, for newly awarded contracts, or

exercised options, or renewed or extended contracts, employees must be vaccinated by the first day of the performance period.

- Review documentation from each covered employee to prove vaccination status.
  - Employees cannot “self-certify” that they have been vaccinated. They must either show or provide documentation of vaccination status.
  - Digital copies of paperwork are acceptable (photos, scanned images, etc.). Acceptable documentation includes a vaccination card, an immunization record, a copy of medical records, or other official documentation that contains sufficient details.
  - If an employee does not have, or loses, the documentation, s/he must obtain a new copy of the record from the vaccination provider or a State or local health department.
  - A recent anti-body test may not be used in lieu of proof of vaccination.
- Assess Requests for Accommodation for Medical and/or Religious Reasons.
  - All covered contractor employees must be vaccinated, unless they are legally entitled to an accommodation. Accommodation may be appropriate due to a disability under the Americans with Disabilities Act, or because of a sincerely held religious belief, practice, or observance, under Title VII (more on this to come no doubt).
  - The covered contractor is responsible for assessing requests for accommodation. Agencies must also be involved if they are joint employers of the employee in question.

This requirement is not limited to only workers on that contract site. If you are a covered contractor, EVERY employee must be vaccinated except if they fall within the religious or medical carveouts. The vaccination requirements imposed on “covered contractors” even apply to employees that work remotely **unless the employer concludes that they will not come into contact with other covered employees (even including passing through the same common areas such as elevators, lobbies or even parking garages).**

We hope you found this information helpful. Please contact us if you have any questions.

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