



**BBG Client Advisory  
Colorado Covid-19 Update  
7<sup>th</sup> Amended PHO 20-38**

On September 30, 2021, the Colorado Department of Public Health and Environment (CDPHE) issued its **7<sup>th</sup> Amendment** to the pre-existing **Public Health Order 20-38** (PHO 20-38 or Order), describing additional data collection requirements in hospitals, correctional facilities, and schools. Importantly, as it relates to construction industry members, the Order imposes **vaccination and testing requirements on state contractors, including those providing construction-related services, whose employees must enter state facilities to perform their services**. The CDPHE's 7<sup>th</sup> Amended PHO 20-38 is available [here](#).

The City and County of Denver, by and through the Department of Public Health and Environment (DDPHE), adopted the 7<sup>th</sup> Amended PHO 20-38, without revisions or clarifications, on October 7, 2021, which supersedes the DDPHE PHO dated September 9, 2021.

The Order broadly applies to (1) all "State Contractors," defined as **any Contractor** which has entered into a contract with the State of Colorado, *including those for construction-related services*, who (2) perform services in "State Facilities," defined as any **building or utility owned, leased or used by the State**. Under these definitions, contractors performing renovation projects or other construction-related services in existing State buildings or facilities are subject to the Order's requirements. However, the Order does not apply to:

- highways and publicly assisted housing projects, which are expressly excluded; and,
- the construction of new buildings or facilities, until the building or facility is ready for occupancy, because a project is not considered a qualifying "State Facility" until a certificate for occupancy for the building or facility is issued.

**Section III.A** of the Order requires qualifying State Contractors to ensure all employees, agents, and subcontractors who will perform work under a State Contract, including those who have been infected with and recovered from COVID-19 (State Contractor Workers), are **fully vaccinated by October 31, 2021**.

**Unvaccinated individuals**, including those without proof of vaccination, are subject to the following limitations and requirements:

- State Contractor Workers who do not have a medical or religious exemption from vaccination approved by their employer are not allowed to physically enter a State Facility but may provide services remotely; and,
- State Contractor Workers who have a medical or religious exemption from vaccination approved by their employer may enter a State Facility if they participate in twice weekly COVID-19 testing and test negative. If they test positive, they are not allowed to enter a State Facility and must comply with isolation guidance.

Each State Contractor is responsible for identifying all State Contractor Workers who will require access to State Facilities to perform work on its behalf, and to certify (in a form acceptable to the State) that each such State Contractor Worker **is either fully vaccinated or participating in twice weekly COVID-19 testing**. All State Contractor Workers must continue to comply with any face covering requirements in place at State Facilities. The Order's requirements will be enforced by local authorities, who are encouraged to determine the best means of ensuring compliance.

Additionally, on September 1, 2021, the City and County of Denver issued a vaccine requirement applicable to all contractors and subcontractors at any level providing services by contract, whether onsite or in the field, to the City and to listed health care, long term care, educational and shelter facilities. Under this Order, all such contractors and subcontractor must ensure that all personnel are fully vaccinated by September 30, 2021, and must maintain records demonstration compliance, which records must be made available upon request. Employers must provide reasonable accommodations for any personnel who claim medical or religious exemptions from the vaccination.

Industry groups, including the AGC and CCA, are continuing to work with the CDPHE to clarify the State's expectations as to vaccine and testing requirements for construction industry members. Additionally, CCA and six other construction associations sued the City of Denver in Colorado federal court with respect to the City's vaccine mandate, which does not include a testing option, arguing that vaccine mandates for contractors are unconstitutional on several grounds. BBG will continue to monitor developments and share any additional information or clarification provided.

For more information and resources on addressing COVID-19 in construction, please see

<https://covid19.colorado.gov/safer-at-home-faq>

<https://www.coloradocontractors.org/CCA/covid-19.aspx> or

<https://www.agc.org/coronavirus-covid-19>.

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