



BBG Client Advisory Federal Covid-19 Update Executive Order 14042

Under the September 9, 2021, Executive Order 14042, federal contractors, their employees, and subcontractors must comply with vaccine requirements and other guidance issued by the Safer Federal Workforce Task Force.

BACKGROUND

On September 9, 2021, President Biden issued an executive order mandating vaccinations for federal contractors. Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors (the "EO"), directs all agencies to include a clause in all federal contracts specifying the contractor (and all lower-tier subcontractors) shall for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force ("Task Force," established in January 2021). While the EO applies broadly to all types of contracts, it does not apply to subcontracts solely for the provision of products or to contracts under \$250,000.

GUIDANCE FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS

The Task Force Guidance ("Guidance"), requires federal contractors and subcontractors with a "covered contract" to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

A "covered contract" will be interpreted broadly and include any contract and [or?] subcontract of any tier for the furnishing of services, including construction. A "covered contractor" means the prime contractor or subcontractor at any tier who is a party to a covered contract. "Covered contractor employee" means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace.

The Guidance states these requirements are promulgated pursuant to Federal law and therefore supersedes any contrary State or local law or ordinance. If a local law or ordinance establishes more protective workplace safety protocols than contractors must still comply with the local law or ordinance.

Vaccination Requirements

By **December 8, 2021**, covered contractors must ensure all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation.

A covered contractor may be required to provide an accommodation to covered contractor employees who claim a medical or religious exemption. 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. The covered contractor is responsible for considering, and dispositioning, such requests for accommodations regardless of the covered contractor employee’s place of performance.

Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents or digital copies of document:

- Immunization record from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020),
- Medical records documenting the vaccination;
- Immunization records from a public health or State immunization information system; or
- Any other official documentation verifying vaccination.

Significantly, prior infection or recent antibody test cannot be used to prove vaccination status. Also, an individual working on a covered contract from their residence is a covered contractor employee and must comply with the vaccination requirement even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract.

Designated Coordinator to Implement Guidance

Covered contractors must designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols at covered contractor. The coordinator is responsible to ensure the Guidance protocols are disseminated to employees and to ensure employee compliance with proper vaccination documentation.

Contract Incorporation of the Guidance

Under a recent clause issued by the FAR Council, all agencies are required to include an implementing clause in solicitations and contracts for services, including construction, on new contracts awarded on or after November 14, on contracts awarded pursuant to new solicitations issued on or after October 15, 2021, and extensions or renewals of existing contracts and orders awarded on or after October 15, 2021.

The prime contractor is responsible for ensuring the required clause is incorporated into first-tier subcontracts. Higher-tier subcontractors must flow the clause down to the next

lower-tier subcontractor, to the point at which subcontract requirements are solely for the provision of products.

The Guidance including any questions and answers related to the guidance can be found online at <https://www.saferfederalworkforce.gov/new/>.

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