Arizona Builders Alliance

Legal Report

October 13, 2021

**COVID-19 Vaccination Mandate**

With the pandemic trudging onward in the U.S. and abroad, several federal entities have issued guidance clarifying the Biden Administration’s COVID-19 vaccine mandate (Executive Order 14042) for federal contractors and subcontractors. Yet, with multiple federal entities handling different aspects of implementing the mandate, the full scope of its reach has remained somewhat nebulous. This latest guidance further clarifies its scope in several, perhaps unexpected, ways:

* **Who’s covered?**
	+ The scope of application remains to be fully determined.
	+ Applies at present to federal contracts valued at more than $250,000 in most cases.
		- Federal agencies are being encouraged to expand the requirements to include smaller contracts.
	+ Does not apply to non-acquisition contracts (i.e. federal grant funded projects or those contracted through state/local governments with partial federal assistance).
* **What’s required?**
	+ All full- or part-time employees of federal contractors working in connection with a federal project need to be vaccinated by as early as December 8.
		- Includes all workers involved with federal contracts, including support staff, human resources, and remote workers.
		- Even extends those employees NOT working on or in connection with a federal jobsite that may have incidental contact with other employees who are.
	+ Masks and physical distancing requirements for visitors/employees per CDC guidance.
	+ Designated employee(s) to coordinate compliance on jobsites.

* **Risks of non-compliance?**
	+ Cancelled contracts.
	+ Liability for false or fraudulent attestations of compliance under the False Claims Act.
* **What can contractors do?**
	+ Review your contract – as a change in law, a claim for additional time and/or money may be made
	+ Because this is not a force majeure event, but rather an Owner-driven change (for federal contracts), a contractor may be able to recover for delay caused by such change
* **What’s next?**
	+ Clauses reflecting these mandate requirements expected to appear in new contracts by or before November 14.
	+ How/when such clause will be added into existing contracts is yet unclear.
	+ With these mandates looming, contractors and subs should take preemptive steps to minimize disruption and impact as soon as possible.

The impacts of these mandates are significant for federal contractors and subs and unlikely to disappear without consequence. Those organizations likely to be affected should begin preparing a strategy and plan for compliance as soon as possible. Further information and details are available from the Safer Federal Work Force Task Force and other sources. [[1]](#footnote-1) [[2]](#footnote-2) [[3]](#footnote-3)

For questions or further information, feel free to reach out to your trusted legal representatives at Farhang & Medcoff.

1. [https://www.saferfederalworkforce.gov](https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf) [↑](#footnote-ref-1)
2. <https://www.saferfederalworkforce.gov/faq/contractors/> [↑](#footnote-ref-2)
3. <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf> [↑](#footnote-ref-3)