

COVID-19 Safety Requirements for Federal Contractors

September 27, 2021

Introduction

On September 9, 2021, President Biden issued Executive Order 14042, “[Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)” (EO). Pursuant to the order, the [Safer Federal Workforce Task Force](#) (Task Force) released initial guidance for contractors on September 24. This memorandum provides an overview of the required safety protocols included in the [guidance](#), a timeline for implementation and details on three main safety protocols: (1) Vaccination of covered contractor employees; (2) Masking and physical distancing; and (3) Designation of a person or persons to coordinate COVID-19 safety efforts.

The Executive Order and Task Force guidance will hold ramifications for colleges and universities who perform work under covered contracts. While individual institutional analysis will be required, the safety protocols enumerated in the guidance will likely be far-reaching in application across higher education given the broad interpretation of what constitutes a covered contractor workplace.

The Executive Order

While the Biden administration’s [Path Out of the Pandemic Plan](#) describes the EO as a measure requiring federal contractors to vaccinate their employees, the order is actually far broader. Specifically, the EO requires “executive departments and agencies... to the extent permitted by law, ensure that contracts and contract-like instruments ... include a clause that the contractor and any subcontractors (at any tier) ... incorporate into lower-tier subcontracts, [which specifies] the contractor or subcontractor shall, for the duration of the contract, comply with **all guidance** for contractor or subcontractor workplace locations published by the [Safer Federal Workforce Task Force](#)” (emphasis added). The order directs the Task Force to provide by September 24, 2021 “definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations working on or in connection with a Federal Government contract or contract-like instrument.”

The EO also directs the Federal Acquisition Regulatory Council to conduct a rulemaking that amends the Federal Acquisition Regulation (FAR) to include a clause that requires covered contractors performing under FAR-based contracts to comply with Task Force Guidance for contractor and subcontractor workplace locations. Prior to the rulemaking, the FAR Council will develop a clause by October 8 and recommend that agencies deviate from the FAR using their existing authority to do so.¹ Agencies responsible for contracts and contract-like instruments not subject to the FAR are responsible for developing guidance by October 8 that incorporate requirements into their covered contracts and contract-like instruments that are entered into on or after October 15, 2021.

¹ Per subpart 1.4 of the FAR.

Task Force Guidance

On September 24, the Task Force issued [guidance](#) pursuant to the EO. Executive departments and agencies must now ensure covered contracts and contract-like instruments² include a clause stipulating that contractors and subcontractors comply with the requirements included in the Task Force guidance and integrate such clause into any lower-tier subcontracts.³

Safety Protocols

Federal contractors and subcontractors with a covered contract must conform to the following workplace safety protocols:

1. Ensure covered contractor employees are vaccinated against COVID-19, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Ensure that individuals, including covered contractor employees and visitors, comply with the guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designate a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

These requirements are **in addition to** any others workplace safety protocols that apply, such as any workplace safety requirements from OSHA, including any current or forthcoming emergency temporary standards related to COVID-19.

Covered Employees and Workplaces

The above safety protocols will apply to all covered contractor employees, defined as any full-time or part-time employee of a contractor or subcontractor working on or in connection with a covered contract **AND** any full-time or part-time employee of a covered contractor or subcontractor working at a covered contractor workplace even if those employees are not themselves working on or in connection with a covered contract.

A covered contractor or subcontractor workplace 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 the covered contract.⁴ The guidance also applies to contractor or subcontractor workplaces that are located outdoors.

The guidance takes a broad view as to what constitutes a covered contractor workplace, which could have considerable impacts on college and university campuses. Unless a covered contractor can “affirmatively determine” that covered contractor employees who perform work under a covered contract on only one floor or a separate area of a building, site or facility controlled by the contractor will not come into contact with other employees not performing work in connection with the contract, then the other areas of the building, site or facility must also be considered a covered contractor workplace. The same is true if a covered contractor employee only performs their duties in only one building, site or facility on a campus controlled by a covered contractor with multiple buildings, sites or facilities on the campus. The other buildings, sites or facilities on the campus controlled by the covered contractor are considered a

² As defined in Section 2 and Section 5(a) of the EO.

³ The Task Force clause applies to all tiers of subcontracts, except for subcontracts solely for the provision of products.

⁴ This does not include a covered contractor employee’s residence.

covered contract workplace unless the covered contractor can affirm that no interactions will occur between covered employees and employees in those locations.⁵

While this portion of the guidance will require individual analysis from colleges and universities, the guidance's broad definition of a covered workplace will likely translate into wide application of the safety protocols.

Covered Contracts

For contracts awarded prior to October 15, 2021 where performance is ongoing, the guidance requirements clause must be incorporated at the point at which an option is exercised or an extension of the contract is made. Agencies must include the guidance requirements clause in any solicitation between October 15 and November 14. For contracts awarded between October 15 and November 14, 2021, agencies are encouraged to include the guidance requirements clause but are not required to do so unless the solicitation for such contract was issued on or after October 15. For contracts awarded on or after November 14, the guidance requirements clause must be incorporated. Additionally, Section 6(c) of the EO states that “for all existing contracts and contract-like instruments ... agencies are strongly encouraged, to the extent permitted by law, to ensure that the safety protocols required under those contracts and contract-like instruments are consistent with the requirements specified in [the task force guidance].” The guidance expounds on this by noting “agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.” Similarly, the guidance states that “consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold⁶ ... or is a contract or subcontract for the manufacturing products.”

Additionally, the guidance stipulates that covered contractors are required to comply with all Task Force guidance for contractor or subcontractor workplace locations, including any new guidance the Task Force may issue after the point of clause incorporation.

Vaccination Requirements

Requirement and Timing

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. This requirement includes employees who work remotely from their personal residence. For the purposes of the guidance, fully vaccinated means: two weeks after an individual receives the second dose in a two-dose series or two weeks after receipt of a single dose vaccine.

Covered contractor employees must be fully vaccinated no later than December 8, 2021. After that date, all covered contractor employees who are not exempt from the requirement must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract. For a contract where the clause is included via an exercised option or extended or renewed contract, the first day of the period of performance is when the clause has been incorporated into the covered contract.

⁵ For more information, please see Questions 8 and 9 in the [Guidance](#).

⁶ As defined in section 2.101 of the FAR.

Accommodations & Limited Exceptions

A covered contractor should review and consider whether it must confer certain accommodations to covered contractor employees who claim a disability (including medical conditions) or a sincerely held religious belief, practice or observance. Covered contractors shall treat requests for medical accommodations or medical exceptions as requests for a disability accommodation. The contractor is responsible for considering and dispositioning such requests. However, in the event that the agency that is party to the covered contract is a “joint employer” for purposes of compliance with the Rehabilitation Act and Title VII of the Civil Rights Act, the agency and covered contractor should jointly review and determine if an accommodation is granted.

Federal agencies that have an “urgent, mission-critical” need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before full vaccination may approve an exception for the covered contractor with a directive that the covered contractor must ensure covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace.

Documentation

To ensure conformance to the vaccination requirement, a covered contractor must require covered employees to provide documentation affirming their vaccination status.⁷ Acceptable forms of documentation include: a copy of the record of immunization from a healthcare provider or pharmacy, a copy of the COVID-19 Vaccination Record Card,⁸ a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state immunization information system, or a copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of the healthcare professional or clinic site administering the vaccine. Documentation may be provided to an employer via digital copies, including a digital photograph, scanned image or PDF.

An attestation of vaccination by a covered contractor employee is not an acceptable substitute for documentation of proof of vaccination. If a covered contractor employee has misplaced their vaccination documentation, they should contact their vaccination provider site or contact their state or local health department’s immunization information system for assistance.

Additional Considerations

The guidance “strongly encourages” covered contractors to incorporate “similar” vaccination requirements in any non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a federal contract. Examples of such contracts include agreements where non-covered contractors and their employees provide food services, onsite security or groundskeeping services at covered contractor workplaces.

While covered contractors should “ensure their employees are aware of [convenient opportunities to be vaccinated](#),” they are not required to provide onsite vaccinations.

⁷ The designated COVID-19 workplace safety coordinator is charged with ensuring compliance with this requirement.

⁸ CDC Form MLS-319813_r, published on September 3, 2020.

Masking and Physical Distancing Requirements

CDC Guidance for Masking and Physical Distancing

The guidance requires covered contractors to ensure all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, including CDC guidance for specific settings.⁹ If a covered contractor employee is working remotely from their residence on a covered contract, they need not comply with requirements related to masking and physical distancing as a personal residence is not considered a covered contractor workplace.

Masking and Distancing Policies for the Fully Vaccinated

Fully vaccinated individuals must wear a mask in indoor settings in areas of high or substantial community transmission as designated by the [CDC COVID-19 Data Tracker County View Website](#). In areas of low or moderate community transmission, fully vaccinated individuals do not need to wear a mask. Regardless of an area's community transmission level, fully vaccinated people do not need to physically distance.

Masking and Distancing Policies for Those Not Fully Vaccinated

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings regardless of an area's community transmission level. The guidance stipulates that these individuals "to the extent practicable" should maintain a distance of at least six feet from others at all times, including in offices, conference rooms and all other communal workspaces.

Masking Specifics

Covered contractors must require all individuals required to wear a mask in covered contractor workplaces to: wear appropriate masks consistently and correctly (over mouth and nose); wear appropriate masks in any common areas or shared workspaces; and require individuals who are not fully vaccinated to wear a mask in crowded outdoor settings¹⁰ or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

Tracking Area Transmission Levels

Covered contractors must check the CDC COVID-19 Data Tracker County View website for all areas where they have a covered contractor workplace **at least weekly** to determine workplace safety protocols. In the event of community transmission increasing from low or moderate to substantial or high, contractors and subcontractors should activate safety protocols consistent with the aforementioned guidelines. If community transmission drops from high or substantial to moderate or low, the level of transmission must remain at the lower threshold for at least two consecutive weeks before the covered contractor activates protocols consistent with areas of moderate or low transmission.

Communication of Requirements to Visitors

Covered contractors should post signage or take other reasonable steps to instruct visitors on the appropriate workplace safety protocols to follow while at the covered contractor workplace. However, there is no current requirement for a contractor to determine vaccination status of visitors.

⁹ Such as healthcare, transportation, correctional and detention facilities, and school settings.

¹⁰ Not specifically defined.

Accommodations and Exceptions

Consistent with CDC guidelines, covered contractors may provide exceptions to mask wearing and physical distancing. These include instances where an individual is alone in an office with floor to ceiling walls and a closed door or where an individual is eating or drinking and maintaining appropriate distancing, albeit for a limited time.

Covered contractors may additionally provide exceptions to mask protocols in the following scenarios: when covered contractor employees are engaging in activities in which a mask may get wet; high intensity activities where masks cause breathing difficulty; or activities for which wearing a mask would create a risk to workplace health, safety or job duty as determined by an OSHA [workplace risk assessment](#). Lowering masks briefly for identification purposes to ensure safety and security is permitted.

Any exceptions must be approved in writing by a duly authorized representative of the covered contractor.

Designation of a Person or Persons to Coordinate COVID-19 Workplace Safety Efforts

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with the workplace safety protocols detailed in this guidance. Such person may be the same individual tasked with implementing any additional COVID-19 safety protocols required by local, state or federal law. Coordination of the safety protocols may constitute some or all of the individual's regular duties.

Required Responsibilities

The designated individual must ensure information regarding the workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including visitors. Transmission of communication may occur through email, websites, memoranda, flyers, or other means or by posting signage at covered contractor workplaces that outlines requirements in a "readily understandable manner."

The designated individual is also charged with ensuring compliance related to employee provision of appropriate vaccination documentation.

Public Perception

A Gallup COVID-19 tracking survey conducted between September 13-19, 2021, found that roughly six in 10 U.S. adults support President Biden's COVID-19 vaccination initiative, including requirements for federal government workers, employees of large companies and workers at hospitals receiving federal healthcare funds. A larger share of U.S. adults (68 percent) supports a requirement mandating companies give employees paid time off to get vaccinated or recover from vaccine side effects. Meanwhile, the percentage of employees who favor employee vaccination mandates has risen slightly from earlier this year; 58 percent currently say they strongly favor vaccination mandates. This percentage has steadily increased over the summer as 49 percent were in favor in June and 52 percent were in favor in July and August. Opposition to vaccination requirements has held steady since the spring, ranging between 36 percent and 39 percent.¹¹

¹¹ "[Majority in U.S. Supports Biden COVID-19 Vaccine Mandates](#)," Gallup, September 24, 2021.