

THE SAFER FEDERAL WORKFORCE TASKFORCE RELEASES GUIDANCE ON BIDEN'S FEDERAL VACCINE MANDATES FOR FEDERAL EMPLOYEES AND CONTRACTORS

Hodgson Russ OSHA Alert
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A week after President Biden issued Executive Orders [mandating COVID-19 vaccines for federal employees and protocols for federal contractors](#), the Safer Federal Workforce Task Force (“Task Force”) released initial guidance explaining how those requirements will be implemented. The Task Force updated its [Frequently Asked Questions \(“FAQ”\) page](#) on September 16, 2021 to include new and updated information about the requirements in a question and answer format. Key elements of the guidance are summarized below, but affected federal employees, federal contractors, and any visitors entering federal offices should be aware of, and consult, the Task Force’s FAQ as may be applicable to their circumstances. Procedures may also differ slightly from agency to agency. Federal agencies will be permitted to establish different safety protocols for vaccinated versus unvaccinated individuals in recognition of their differing operational requirements, conditions, and potentially applicable state and local regulations or laws.

Federal Employee Vaccination Deadlines and Proof

Federal employees must be “fully vaccinated” by November 22, 2021. But fully vaccinated means two weeks after a final dose of a single or double-dose vaccine, which puts the deadline for administration of the vaccine at November 8, 2021. Any federal employee who fails to become vaccinated by the deadline may be subject to discipline, up to and including termination. Vaccination is required even for federal employees who work remotely. And, any employees commencing federal employment after November 22, 2021 must be vaccinated prior to their start dates, except for “mission-critical hiring” for which an agency head may provide up to a 60-day exception.

The only other exceptions to the vaccination requirement are for circumstances where the law requires an exception, such as reasonable accommodations for individuals with disabilities or workers with sincerely held religious beliefs, practices, or observances. The Task Force indicated that further guidance will be forthcoming in that regard to assist federal agencies when faced with those issues. United States Postal Service employees might be exempted, but only in the sense that the postal

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workers would instead be made subject to the Occupational Safety and Health Administration's forthcoming Emergency Temporary Standard ("ETS") applicable to employers with at least 100 workers.

Federal employees will be required to provide documentation proving their vaccination status, and must certify under oath and penalty of perjury that the information they are providing is true and correct. Federal agencies are required to collect this information, provide employees with a Privacy Act statement, and comply with the Privacy Act and Rehabilitation Act of 1973 and other applicable federal laws. Agencies will be permitted to develop their own processes for collecting and maintaining the information, but must have written instructions for its Employee Medical File ("EMF") system with appropriate safeguards.

Visitors to Federal Agencies

Visitors to federal offices must complete a Certificate of Vaccination form under oath and penalties of perjury, which will require disclosure of vaccination status and an agreement to comply with safety protocols, including masking, social distancing, and providing proof of a negative COVID-19 test within the prior three days if not fully vaccinated. Agencies are permitted to determine what type of test is required or acceptable in connection with the use of the form. Federal employees from one agency entering another federal agency are to be considered visitors, and will be required to complete the form.

Federal Contractors

Federal agencies are encouraged to include vaccination requirements into their contracts beyond those specifically covered by President Biden's Executive Order. Prior to those contract provisions going into effect, federal agencies are required to ask about vaccination status of on-site contractor employees. To facilitate this, onsite contractor employees are also required to complete the Certificate of Vaccination. But if the contractor's employees are regularly tested pursuant to an agency testing program, they will not be required to submit a negative COVID test result with the Certificate. In accordance with the Privacy Act and Paperwork Reduction Act, agencies will not maintain Certificate of Vaccination forms from contractors unless the agency already has a system of records that covers the collection of this information from onsite contractor employees.

The Take-Away

While the Task Force's guidance primarily addresses federal employees, the Task Force is expected to say more in the coming weeks about federal contractor obligations and vaccination exceptions. The current guidance, however, may provide valuable insight or foreshadowing of a regulatory structure that OSHA could potentially implement for the private sector (i. e., setting vaccination deadlines, limited exceptions, vaccination proof requirements, visitor requirements, contractor policies, etc.). Ideally, the OSHA emergency standard will be published with template plans to assist affected employers with implementation of the applicable requirements.

If you have questions about the Task Force, OSHA's forthcoming vaccination ETS, mandatory vaccination requirements, COVID-19 guidance, or other general questions about OSHA compliance, please contact [Jason Markel](#) (716.848.1395), [Glen Doherty](#) (518.433.2433), or [Charles H. Kaplan](#) (646.218.7513).