

Government Contracts
Environmental and Workplace Health & Safety
Labor and Employment

Vaccination Required for Employees Working in Connection with Government Contracts or in Shared Facilities

By: [Sati Harutyunyan](#), [Matthew L. Haws](#), [Gabrielle Sigel](#), [Emma J. Sullivan](#), and [Joseph J. Torres](#)

The Safer Federal Workforce Task Force (Task Force) issued its much anticipated guidance to federal contractors pursuant to President Biden's Executive Order 14042 (EO), which we covered [here](#). Simply put: the Task Force requires that covered contractor employees get vaccinated—whether they are full-time or part-time; whether they work at a contractor workplace, Federal workplace, or from their homes; and whether they work directly on a government contract, indirectly, or only at the same workplace as those who do. And this must be done by the holidays: the guidance requires prime contractors and subcontractors at any tier to ensure that all of these employees are fully vaccinated by December 8, 2021, unless they are legally entitled to an accommodation. (Thus, employees covered by the guidance must receive a single-dose vaccine or the second dose in a two-dose series by the Monday before Thanksgiving.) Here are some key takeaways from the guidance:

What contracts and contractors are subject to this guidance? The vaccine EO requirements will be made applicable to contracts through a clause to be promulgated by the FAR Council by October 8 and incorporated into new contracts, extensions, and options exercised under existing contracts starting October 15, 2021. That clause, in turn, is expected to point to the Safer Federal Workforce Task Force guidance for its substantive requirements.

The Task Force guidance also “strongly encourages” agencies to incorporate the requirement into existing contracts and contracts entered into between the date of the EO and effective date itself, as well as contracts or subcontracts for the manufacturing of products.

What must covered contractors do to comply? Covered contractors must ensure that all employees are fully vaccinated against COVID-19, unless the employee is legally entitled to an accommodation no later than December 8, 2021. Covered contractors must also comply with CDC guidance related to masking and physical distancing, and must designate a coordinator for COVID workplace safety efforts. Specifically:

- Covered contractors must require employees to show or provide a record of immunization, such as a COVID-19 vaccine card; a digital copy, including a photograph, is acceptable.
- Covered contractors are *not* required to provide onsite vaccination for their employees and the guidance is silent on whether employees must be provided time off to receive their vaccine doses.
- Covered contractors are “responsible for considering, and dispositioning” requests for accommodation. The guidance notes that contractors “may be required to provide an accommodation” because of a disability, sincerely held religious believe, practice, or observance.
- Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Which employees must be vaccinated? The guidance requires vaccination for any full-time or part-time employee, who is not entitled to an accommodation, if they (1) perform work on or in connection with a covered contract, or (2) work at a location where those employees are, even if they themselves are not working on or in connection with a covered contract. This includes:

- Employees working on or in connection with a covered contract from their homes;
- Employees who do not work directly on the contract but “who perform duties necessary to the performance of the covered contract...such as human resources, billing, and legal review,” and
- Employees not working in connection with a covered contract but working from the same location as those who do (or where they are “likely to be present”).

When is an employee considered fully vaccinated? Employees are considered fully vaccinated two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is no post-vaccination time limit on fully vaccinated status.

The breadth of the Task Force guidance will create significant questions for contractors as they seek to implement its requirements. Jenner & Block will be closely monitoring updates to the guidance issued by the Task Force and regulations issued by the FAR Council and OSHA, and other agency-specific actions. Our lawyers stand ready to assist our clients as they determine how to respond to the Administration’s latest requirements and guidance.



Contact Us



Sati Harutyunyan

sharutyunyan@jenner.com | [Download V-Card](#)



Matthew L. Haws

mhaws@jenner.com | [Download V-Card](#)



Gabrielle Sigel

gsigel@jenner.com | [Download V-Card](#)



Emma J. Sullivan

esullivan@jenner.com | [Download V-Card](#)



Joseph J. Torres

jtorres@jenner.com | [Download V-Card](#)

Meet Our Government Contracts Team

Meet Our Environmental and Workplace Health & Safety Team

Meet Our Labor and Employment Team

Practice Leaders

David B. Robbins

Co-Chair, Government
Contracts

[drobbins@jenner.com](mailto:d Robbins@jenner.com)

[Download V-Card](#)

Marc A. Van Allen

Co-Chair, Government
Contracts

mvanallen@jenner.com

[Download V-Card](#)

Gabrielle Sigel

Co-Chair, Environmental and
Workplace Health & Safety

gsigel@jenner.com

[Download V-Card](#)

Steven M. Siros

Co-Chair, Environmental and
Workplace Health & Safety

ssiros@jenner.com

[Download V-Card](#)

Joseph J. Torres

Co-chair, Labor and
Employment

jtorres@jenner.com

[Download V-Card](#)

Emma J. Sullivan

Co-chair, Labor and
Employment

esullivan@jenner.com

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