

Updates Regarding COVID-19 Vaccine Mandate for Federal Contractors Released

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On November 4, 2021, [the White House announced](#) that the deadline for the federal contractor vaccination mandate will be extended to match the deadlines included in the new vaccination rules set forth by the Centers for Medicare & Medicaid Services and the Occupational Safety and Health Administration, respectively. “Covered contractor employees” of federal contractors will now need to have their final vaccination dose – either their second dose of Pfizer or Moderna, or single dose of Johnson & Johnson – by January 4, 2022. This extension is intended to provide federal contractors with more leeway to develop and implement vaccination policies on the same timeline as other employers in their industries.

Further, on November 10, 2021, the Safer Federal Workforce Task Force issued [new FAQs](#) for federal contractors, which provide additional clarity as to the guidance that was initially released on September 24, 2021 (the “Guidance”), in response to President Biden’s Executive Order 14042 (our previous client alert on the release of the Guidance is available [here](#)). As described below, the new FAQs focus on various compliance and enforcement issues including, but not limited to, the circumstances under which accommodations should be granted to employees and how a federal contractor should handle an employee who refuses to become vaccinated.

Guidance Regarding Medical Accommodations

Citing [CDC guidance](#), the new FAQs confirm that a history of the following medical conditions should be considered a contraindication to vaccination, and thus justify a medical accommodation: (i) severe allergic reaction, e.g., anaphylaxis, after a previous dose or to a component of a vaccine; and (ii) immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of a vaccine. Further, where an employee is not entitled to a medical accommodation, the Task Force sets forth additional circumstances under which it may be appropriate to allow the employee to delay his or her vaccination for medical reasons. Where a delay is granted, the federal contractor must require the employee to become vaccinated as soon as he or she is able to do so safely. Further, during any such delay period, the employee must adhere to all applicable masking and physical distancing requirements for unvaccinated individuals.

Addressing Compliance Issues

Perhaps the most common question raised by federal contractors following the issuance of the Guidance was which steps should be taken if an employee who has not been granted an accommodation refuses to become vaccinated. The new FAQs recommend that the federal contractor first follow its usual processes for enforcement of workplace policies, such as those addressed in an employee handbook or collective bargaining agreement. Federal contractors may choose to encourage such an employee to comply, including through a limited period of counseling and education, followed by additional disciplinary measures if necessary. The new FAQs suggest that termination should occur only after continued noncompliance. Further, during any period of time in which the federal contractor is pursuing or planning discipline or termination, the employee should not be placed on administrative leave, but should be required to remain in the workplace and follow all masking, physical distancing, and other safety policies for unvaccinated individuals.

The new FAQs also state that where a federal contractor is working in good faith but encounters challenges achieving compliance, the executive department or agency in question should work with the federal contractor to address such challenges. “Significant actions, such as termination of the contract, should be taken” only if the federal contractor “is not taking steps to comply.” This language in the new FAQs is far from a legal guarantee that an executive department or agency must show flexibility to federal contractors; however, it may provide a modicum of reassurance, as it is an apparent acknowledgment by the Task Force that some federal contractors will have trouble achieving compliance by the January 4, 2022, deadline despite their best efforts.

Effect of Vaccination Mandate on Corporate Affiliates

The Guidance created some ambiguity with respect to whether, in an instance where a corporate affiliate of a federal contractor does not otherwise qualify as “covered” itself, the employees of such affiliate are considered “covered contractor employees” subject to the vaccination mandate. The new FAQs have clarified that an employee of a corporate affiliate of a federal contractor is considered a “covered contractor employee” if the employee performs any work at a “covered contractor workplace.” Two entities are “affiliates” of one another where, directly or indirectly, either entity controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control may include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees.

Workplace Signage

Per the Guidance, federal contractors should post signage at entrances to workplaces providing information on safety protocols for both vaccinated and unvaccinated individuals (including employees, contractors, and visitors). In the new FAQs, the Task Force has provided sample signage: signs that can be used when the level of community transmission is high or substantial can be found [here](#), and signs that can be used when the level of community level of transmission is low or moderate can be found [here](#).

Despite the helpful information set forth in the new FAQs, compliance with the Task Force’s requirements will continue to raise issues for federal contractors. We will continue to monitor developments and update clients on these issues. In the meantime, clients with contracts with any executive department or agency should take steps necessary to comply with the Task Force’s requirements, including implementing a vaccine requirement for their “covered contractor employees.”

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