



# COVID-19 Vaccination Requirements on Direct Federal Agency Prime Contracts and Subcontracts



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# AGENDA

- **Applicability of the federal vaccine mandate to new and existing contracts and subcontracts**
- **Which employees are covered**
- **Medical and religious exemptions and accommodations**
- **Best practices for dealing with government modifications**
- **Collective bargaining and labor issues**
- **Live Q&A**

# Timeline

- On September 9, the Biden Administration issued Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors
- On September 24, 2021, the Safer Federal Workforce Task Force released its Guidance implementing the Executive Order
- On September 30, 2021, the FAR Council issued a memorandum issuing FAR 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors
- On September 30, 2021, the Civilian Agencies Acquisition Council ("CAAC") issued a letter authorizing the use of FAR 52.223-99 for the civilian agencies
  - Note that the various agencies can modify FAR 52.223-99 with CAAC approval
- On October 1, 2021, DoD issued a deviation authorizing the use of DFARS 252.223-7999

# What is Required

- Covered contractor and subcontractor employees must be fully vaccinated by December 8, 2021 (extended to January 4, 2022) unless exempt
- Covered contractors and subcontractors must to check vaccination records of covered employees and must designate an individual to coordinate vaccine implementation
- Covered contractor and subcontractor employees must comply with CDC guidance on masking and social distancing
- Covered contractor and subcontractor employees must comply with federal worksite restrictions

# Which Contracts are Covered

- New contracts awarded on or after November 14, 2021 from solicitations issued before October 15, 2021 that exceed the simplified acquisition threshold as defined in FAR 2.101 (generally \$250,000)
- New solicitations issued on or after October 15, 2021 and their resulting contracts that exceed the simplified acquisition threshold
- Extensions or renewals of existing contracts and orders that exceed the simplified acquisition threshold that are awarded on or after October 15, 2021
- Options on existing contracts that exceed the simplified acquisition threshold that are exercised on or after October 15, 2021
- Agencies are strongly encourage to include the clause in all existing contracts

# Which Contracts and Subcontracts are Covered

- Subcontracts at all tiers under covered contracts that are in excess of the simplified acquisition threshold
- Does not have to be flowed down to suppliers who are not performing labor in support of the contract

# Which Employees are Covered

- Employees working on a covered contract or subcontract
- Employees working “in connection with” a covered contract or subcontract
  - Employees who perform duties necessary to the performance of the covered contract but not directly performing the specific contract work (**e.g.**, administrative, human resources, billing, and legal)
- Employees **not** working on or in connection with a covered contract or subcontract that work in a covered contractor workplace
  - Covered contractor workplace is 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 a covered contract



# Which Employees are Exempt

- Employees who are exempt for medical reasons or sincerely held religious belief, practice, or observance
- Employees who do not work on or in connection with a covered contract or subcontract that work full time out of their residence and do not go into a covered contractor workplace
- Employees who do not work on or in connection with a covered contract or subcontract and work in a location where no other employees with whom they may come into contact works on or in connection with a covered contract or subcontract

# Medical and Religious Exemptions

- Medical and religious bases for exemption
  - Medical – Americans with Disabilities Act
    - Obtain medical documentation
  - Religious – Title VII of the Civil Rights Act
    - Not required to have a discussion with the employee before making a determination but it is a best practice
    - Limited inquiry into the facts and circumstances of the employee's claim of a sincerely held religious belief
- No exemption for political or personal objections

# Medical and Religious Accommodations

- Examples of potential accommodations:
  - Masking and social distancing
  - Weekly COVID testing
  - Remote work
  - Reassignment
  - Unpaid leave

# Government Modifications

- Modifications are bilateral – both parties have to sign
- Determine if your contract is covered
- If your contract is not a covered contract, you could:
  - Refuse to sign the modification
  - Try to negotiate more favorable terms
- Expressly reserve your right to an equitable adjustment in price and schedule

# Collective Bargaining and Labor Issues

- Impact of the vaccine requirement on the existing labor shortage
- Termination of employees who refuse to get vaccinated
- Paid time off to get vaccinated and recover from side effects
- Impact of the OSHA ETS

# QUESTIONS



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