

The Safer Federal Workforce Task Force has published “Guidance for Federal Contractors and Subcontractors” in relation to Executive Order 14042 *Ensuring Adequate COVID Safety Protocols for Federal Contractors*. The guidance is attached and can be found in the link [HERE](#).

More information can be found [HERE](#).

Safer Federal Workforce Task Force Issues Guidance for Federal Contractor Compliance with COVID-19 Executive Order

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As expected, the [Safer Federal Workforce Task Force](#) issued the [Guidance](#) contractors have been anticipating to implement President Biden's September 9, 2021 [Executive Order 14042: Ensuring Adequate COVID Safety Protocols for Federal Contractors \("Order"\)](#). The 14-page document includes definitions, description of the specific requirements contractors must undertake and by when, and a list of 21 FAQs. Importantly, FAQ (#20) states that covered federal contractors must comply with the Guidance independent of the requirements of OSHA's upcoming Emergency Temporary Standard that will apply to employers with 100 or more employees.

Though the text of the Order did not explicitly state it, the Guidance makes clear contractors will be required to mandate vaccinations of covered employees, except in limited circumstances where a legally entitled accommodation is appropriate. The guidance states covered employees must be fully vaccinated no later than December 8, 2021.

Additional highlights of the Guidance include:

- **A Broad Scope:** the Guidance does not alter the scope of the [Order's coverage or exclusions](#) and applies to a:
 - procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;
 - contract or contract-like instrument for services covered by the Service Contract Act (SCA);
 - contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or
 - contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Notably, whereas the proposed federal contractor \$15 Minimum Wage regulations omit coverage for procurement contracts for services, the Task Force Guidance does not. **Thus, service providers – prime and subcontractors – may be covered by FAR implementation of the Guidance, even if they do not have any contract covered by the SCA.** As a reminder, subcontracts solely for the provision of products are expressly excluded and contracts for the provision of products (e.g. non-procurement for services contracts) are not included in the list of covered contracts or contract-like instruments.

Interestingly, the Guidance also "strongly encourages" agencies to apply the Guidance to contracts "for the manufacturing of products," which seems to be at odds with the Order's exclusion of subcontracts solely for the provision of products.

- **Broad Coverage for Workplaces and Employees** : via its definitions and FAQs, the Guidance expands coverage to remote employees and any employee at a federal contractor location where any employee is working "on or in connection with" a covered federal contract.

Covered contractor employee – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract **or working at a covered contractor workplace**. This includes employees of covered contractors **who are not themselves working on or in connection with a covered contract**.

Covered contractor workplace – means a location [including outdoor workplaces – FAQ 7] 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**. A covered contractor workplace does not include a covered contractor employee's residence.

The Guidance also expressly addresses remote workers:

Q11: How does this Guidance apply to covered contractor employees who are authorized under the covered contract to perform **work remotely** from their residence?

A: An individual **working on a covered contract from their residence** is a covered contractor employee, and must comply with the **vaccination** requirement for covered contractor employees, **even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract**. A covered contractor employee's residence is not a covered contractor workplace, so while in the residence the individual need not comply with requirements for covered contractor workplaces, including those related to **masking and physical distancing**, even while working on a covered contract.

As for remote workers working on or in connection with a covered contract, they must be vaccinated, regardless of whether they ever work at or visit a covered location. However, remote workers while at their residences need not comply with masking and distancing requirements.

Thus, Guidance coverage is determined primarily by assessing for each of a federal contractor's locations whether federal work on – or even in connection with – a covered contract is being performed. At all such locations, all employees at that location and visitors to that location are covered.

An employee works "in connection with" a covered contract if they "perform[s] duties necessary to the performance of the covered contract, but [is] not directly engaged in performing the specific work called for by the covered contract. These functions may include, for example, "human resources, billing, and legal review, perform work in connection with a Federal Government contract."

- **All Campus Buildings and Employees May Be Covered**: for federal contractors with campus environments, but only one building where federal work is performed (on or in connection with), Guidance FAQ 9 states that the requirements apply to all the buildings, employees and visitors at each building,

...unless a covered contractor can affirmatively determine that none of its employees in or at one building, site, or facility will come into contact with a covered contractor employee during the period of performance of a covered contract... including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

- **Vaccines, Masking and Distancing:** covered employees must be "fully vaccinated," unless legally entitled to an accommodation due to a disability or religious belief, practice or observance. Covered employees and site visitors must follow [CDC guidance](#) for masking and physical distancing. Covered contractors must require the following for all individuals in covered workplaces:
 - Wear appropriate masks consistently and correctly (over mouth and nose).
 - Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).
 - For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.
- **Notice to Employees and Visitors:** covered contractors must designate a person or persons to implement the Guidance and "ensure that covered contractor employees [and visitors] comply with the requirements ... related to the showing or provision of proper vaccination documentation."

It goes without saying that federal contractors and subcontractors have a lot of work in front of them to implement the Order and this Guidance. We will share additional thoughts and insights as we continue to dig in and learn more.

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