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COVID-19 Task Force Guidance to Federal Contractors & Subcontractors

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On Friday, September 24th, the Safer Federal Workforce Task Force (“Task Force”) issued the highly anticipated COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (“Guidance”). The Guidance implements the requirements of Executive Order No. 14042, “Ensuring Adequate COVID Safety Protocols for Federal Contractors” (“Guidance”), issued by President Biden on September 9th.

Below are three key take-aways from the Task Force's guidance:

1. What Does the Order Require?

The Guidance requires that covered contractor employees subject to the Order must be fully vaccinated against COVID-19 on or before December 8th. A covered contractor employee is considered fully vaccinated 2 weeks after receiving the second does in a two-dose series (*i.e.*, Pfizer and Moderna), or 2 weeks after receiving a single-dose vaccine (*i.e.*, J&J/Janssen). The Order provides limited exceptions to this vaccine mandate, such as accommodation for a disability or a sincerely held religious belief or practice applies. The Order **does not** provide an exception for COVID-19 testing.

The Guidance further confirms that covered contractors must require its employees to furnish proof of their vaccination statuses, through one of the following documents: (i) a valid COVID-19 vaccination card (CDC Form MLS-319813_r); (ii) a record from a health care provider or pharmacy; (iii) a copy of medical records documenting the vaccination; (iv) an immunization record from a public health or state immunization information system; or (v) any other official record verifying vaccination status.

The Guidance also states that covered contractors must comply with the CDC's guidance regarding mask wearing and physical distancing. Specifically, in areas of “high or substantially high community transmission,” all employees (regardless of vaccination status) must wear masks in indoor settings. Conversely, in areas of “low or moderate community transmission,” fully-vaccinated employees do not need to wear a mask.

Finally, the Guidance directs covered contractors to designate a person (or persons) to coordinate and implement the requirements of the Order. The designated individual must be responsible for ensuring that information regarding COVID-19 workplace safety is provided to employees, including

communications through email, memoranda, flyers, etc.

2. Which Contracts are Subject to the Order?

The Guidance's definition of the term "covered contract" is substantively broad. It applies to Federal contracts and contract-like instruments, which includes "contracts and any subcontract of any tier thereunder." Notably, the Order is not limited to only Federal procurement contracts executed under the Federal Acquisition Regulation ("FAR"). The Guidance provides numerous examples of covered contracts, such as procurement contracts, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, services agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing."

No later than October 8th, the Order directs the FAR Council to amend the FAR to ensure that the requirements are included in Federal procurement solicitations and contracts issued on or after October 15th. For ongoing contracts, this mandate must be included upon the exercise of an option period, or through bilateral contract modifications. These requirements must be flowed-down to all lower-tier subcontractors.

The Guidance also encourages federal agencies to apply the Order's requirements to non-covered contracts. Thus, it is likely that covered contractors who may not be subject to the Order may nevertheless receive agency-specific requirements imposing vaccine mandates.

3. Which Locations are Covered by the Order?

The Guidance defines "contractor workplace location" as any location where employees work on a covered contract, which may include both the contractor's and the Federal government's location. The Guidance clarifies that all employees within a workplace location are generally subject to the requirements of the Order, regardless of the fact that certain employees may not perform work on a covered contract.

However, an exception to the Order's requirements may apply if a contractor can demonstrate that certain employees located "on another floor or in separate areas of the building" will not come into contact with employees working on a covered contract. This exception is functionally narrow, as it will not apply if covered and non-covered employees are likely to interact in common areas such as lobbies, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

Notably, the Guidance states that employees working remotely on a covered contract, even if they never enter a covered contractor workplace, are subject to the Order's requirements. Thus, while a remote employee's residence is not considered a covered contractor workplace, these remote employees must comply with the Order's vaccine mandate and covered contractors must obtain proof of the employee's vaccination status.

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