

## New Task Force FAQs Address Contractor Vaccine Mandate Enforcement, Accommodations

Litigation Alert

11.03.2021

On November 1, 2021, the Safer Workplace Task Force (Task Force) released new [Frequently Asked Questions](#) (FAQs) on contractor compliance with the workplace safety and vaccination requirements mandated by President Biden's [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) (Executive Order). The Executive Order requires covered contractors, covered contractor employees, and those working at covered contractor workplaces to comply with vaccination, masking, and physical distancing protocols, absent an accommodation for disability or religious reasons. Our previous alerts have covered the [Executive Order](#) in more detail and the subsequent [Task Force guidance](#) and may be helpful for understanding key definitions and nuances in the new FAQs.

A brief timeline highlights where the new FAQs fit in to the broader picture of the Executive Order:

- **September 9, 2021:** The Biden administration releases the Executive Order, indicating that federal contractors will soon be subject to employee vaccination, masking, physical distancing, and compliance monitoring requirements via a forthcoming Federal Acquisition Regulation (FAR) clause.
- **September 24, 2021:** The Task Force releases [guidance for federal contractors and subcontractors](#) (Guidance) setting out key definitions for covered contractors, covered contractor employees and workplaces, and mandating vaccination for any covered contractor employee working on or in connection with a covered contract or working at a covered contractor workplace.
- **September 30, 2021:** The FAR Council issues a [class deviation clause](#) requiring compliance — as early as December 8, 2021 — with Task Force Guidance for covered contracts and "strongly encourag[ing]" the inclusion of the clause in non-covered contracts.
- **November 1, 2021:** The Task Force releases new FAQs on contractor compliance, accommodations, and the scope of covered contractor workplaces.

The new FAQs build on previous recommendations about compliance with the vaccination mandate, the process for granting accommodations, and the scope of covered entities. Further, they address the relationship between contractor accommodations and federal workplaces. The key takeaways are as follows:

- **Good Faith Effort:** The new FAQs establish a "good faith" standard for a contractor's efforts to come into compliance with the Guidance. This is a significant development, as it indicates that the government is not taking a bright-line approach to enforcement for contractors who are attempting to become compliant. However, this also means that the approaches or perspectives of contracting officers working with contractors who are facing challenges with compliance may be difficult to predict and may produce varying outcomes. At this point a contractor's most proactive approach is to be working diligently toward compliance and retain an open dialogue with their agency customers — including keeping contracting officers aware of the status of compliance on an ongoing basis.
- **Timing of Requests for Accommodations and Accommodation Criteria :** Requests for accommodations do not need to be resolved by the time covered contractor employees begin work on a covered contract as long as the employees requesting accommodations comply with workplace safety protocols for unvaccinated individuals. If an accommodation is denied, contractors should establish a timeline for the employee to promptly become fully vaccinated. Furthermore, the FAQs direct covered contractors to the Centers for Disease Control recommendations regarding accommodation requests or vaccination delays based on pre-existing conditions, pregnancy, and participation in clinical trials.

- **Requirements for Employees with Accommodations in Federal Workplaces :** Covered contractor employees who have received accommodations from a covered contractor and are working at a federal workplace should comply with the federal agency's requirements for unvaccinated individuals, including masking, physical distancing, and testing. Notably, agencies may determine that, due to the nature of a project or federal workplace, vaccination is the only appropriate workplace safety protocol. In such circumstances, even employees with accommodations may not work at those federal workplaces. Because of this, contractors should put their respective agency customers on notice when they grant an employee an accommodation.
- **Employee and Contractor Noncompliance :** For covered contractor employees who refuse to be vaccinated and have not been provided an accommodation, contractors should determine the appropriate method of enforcement. Contractors can utilize their traditional processes for enforcing workplace requirements or model their approach after the federal agencies, starting with a period of education and counseling, followed by disciplinary measures and, in the face of noncompliance, removal. For contractors who are noncompliant (as opposed to contractors who are making a good faith effort to become compliant but are not yet compliant), significant actions, including termination of a contract, should be taken by a contracting officer.
- **Prior Access to Documentation :** For the purposes of documenting compliance with vaccination requirements, contractors can consider prior access to an employee's documentation or access via a state's immunization database sufficient.
- **Affiliates:** The employees of a covered contractor's corporate affiliate are considered covered contractor employees if those employees work at a covered contractor workplace. If a covered contractor's employees are working on or in connection with a covered contract at a workplace controlled by a corporate affiliate, the workplace is considered a covered contractor workplace.

While the FAQs address several areas of concern for covered contractors, questions remain about the practical considerations of compliance and enforcement, as well as the live issues pertaining to the relationship between the Executive Order and state bans on vaccination mandates. We will continue to monitor and report on the developments in COVID-19-related requirements for contractors and subcontractors.

---

If you have questions about the COVID-19 safety requirements for federal contractors and subcontractors, please contact one of the Miller & Chevalier attorneys listed below:

Jason Workmaster, [jworkmaster@milchev.com](mailto:jworkmaster@milchev.com), 202-656-5893

Alex Sarria, [asarria@milchev.com](mailto:asarria@milchev.com), 202-626-5822

Sarah Barney\*

*\*Former Miller & Chevalier attorney*

---

The information contained in this communication is not intended as legal advice or as an opinion on specific facts. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. For more information, please contact one of the senders or your existing Miller & Chevalier lawyer contact. The invitation to contact the firm and its lawyers is not to be construed as a solicitation for legal work. Any new lawyer-client relationship will be confirmed in writing.

This, and related communications, are protected by copyright laws and treaties. You may make a single copy for personal use. You may make copies for others, but not for commercial purposes. If you give a copy to anyone else, it must be in its original, unmodified form, and must include all attributions of authorship, copyright notices, and republication notices. Except as described above, it is unlawful to copy, republish, redistribute, and/or alter this presentation without prior written consent of the copyright holder.