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Federal Government Issues New Guidance on Vaccination Requirements for Contractors

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As previously reported, the Biden Administration issued an executive order on September 9, 2021 setting forth new COVID-19 safety protocols for certain federal contractors (the "Executive Order"). The Safer Federal Workforce Task Force (the "Task Force") is tasked with developing the COVID-19 safety requirements that covered contractors and subcontractors will be required to follow.

The Task Force has now released FAQs providing some information on what the forthcoming COVID-19 safety requirements for covered federal contractors and subcontractors will look like. Some of the key information disclosed in the FAQs is as follows:

1. ***Remote Workers May Be Covered***. As we previously reported, the new COVID-19 requirements will be imposed on contractors who enter into certain new contracts or contract-like instruments beginning October 15, 2021. While the precise requirements have yet to be issued, it appears – based on the requirements imposed on federal employees – covered contractors may be required to have covered employees vaccinated regardless of whether they work remotely.
2. ***Disability and Religious Exceptions***. Also gleaned from the federal employee guidance is that there will likely be "limited" exceptions from the vaccination requirements for "employees who communicate to the agency that they are not vaccinated against COVID-19 because of a disability or because of a sincerely held religious belief, practice, or observance." The FAQs note the exception analysis is fact-specific and must be conducted on a case-by-case basis, but also indicate "[a]dditional guidance on legally required exceptions will be forthcoming."
3. ***Expanded Applicability of Vaccination Requirements***. Notwithstanding the fact the Executive Order only imposes the new COVID-19 requirements on certain contractors based on the type and date of their federal government contracts, the

FAQs state "[a]gencies are **strongly encouraged to incorporate [employee] vaccination requirements into contracts that are not covered** by [the] Executive Order… This might include, for example, incorporating vaccination requirements into contracts in advance of when they are otherwise required by the Executive Order or incorporating requirements into contracts that are not covered by the Executive Order, such as contracts under the Simplified Acquisition Threshold." (emphasis added). Accordingly, contractors that thought they would not be covered by the COVID-19 safety requirements based on the types of contracts they have with the government – e.g., contracts solely for the provision of products – will need to check their new and renewed contracts after October 15, 2021 to determine whether the new requirements are incorporated.

4. ***Additional Guidance for Onsite Contractor Employees***. Prior to the time contractors are required to implement vaccination requirements, agencies must ask about the vaccination status of all "onsite" contractor employees and should provide all onsite contractor employees with a Certification of Vaccination form before they enter any federal building or worksite. Onsite contractor employees must attest to the truthfulness of their response regarding their vaccination status, and anyone who fails to respond will be treated as not fully vaccinated for purposes of safety protocols onsite. Onsite contractor employees who are not fully vaccinated and are not required to be vaccinated are required to demonstrate proof of a negative COVID-19 test, dated within the prior three days, in order to enter a federal building or worksite. Agencies may determine the type of tests they will permit, but the test must be FDA-authorized to detect current infection and indicate the date of the results. There is an exception for contractor employees who are "regularly tested pursuant to an agency testing program." Such workers "do not need to provide proof of a negative COVID-19 test from no later than the previous 3 days prior to entry to a federal building unless required to by the agency testing program."

Further guidance and details will be issued in the coming days and weeks. We will continue to report on developments as further information is released.

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