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Additional Contractor Vaccination Mandate Guidance Issued

Government Contractor Compliance & Regulatory Update Blog on **October 1, 2021**

The Safer Federal Workforce Task Force has released a set of frequently asked questions and answers ("FAQs") regarding the Guidance for Federal Contractors and Subcontractors (the "Guidance") it issued last week. Our comprehensive summary of the Guidance is available here.

The new FAQs largely repackage the information provided in the Guidance. However, they do provide additional detail and information regarding the Guidance, which includes the following.

- ***Interplay with the Upcoming OSHA Emergency Temporary Standard.*** As previously reported, employers with 100 or more employees will be subject to a soon-to-be-issued emergency temporary standard that will include a testing option for those who choose not to vaccinate. The new FAQs make clear that covered contractors and subcontractors ("Contractors") must comply with the Guidelines – which do not contain a testing option –"regardless of whether they are subject to other workplace safety standards."
- ***Interplay with State and Local Laws.*** Many contractors have wondered how they can comply with the Guidance in jurisdictions that prohibit vaccine mandates or take adverse action against employees who refuse to vaccinate. The new FAQs directly address this quandary, making clear that to the federal government there is an easy answer: covered Contractors must comply with the Guidelines – the Guidelines' "*requirements are promulgated pursuant to Federal law and supersede any contrary State or local law or ordinance. Additionally, nothing in the Task Force Guidance shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective workplace safety protocols than those established under the Task Force Guidance*."
- ***Monitoring Subcontractor Compliance***. Covered prime contractors must ensure the requirements set forth in the Guidance are incorporated into their first-tier subcontracts and subcontractors are thereafter required to fully comply (including by flowing down the clause to lower-tier subcontractors). The new FAQs provide that prime contractors do not have an affirmative obligation to monitor

subcontractor compliance, but rather may "*assume the subcontractor is complying with the [Guidance … unless] the prime contractor has credible evidence otherwise*."

- ***Onsite Vaccinations.*** The FAQs make clear contractors do not have to provide onsite vaccination opportunities for their employees.

Even with the new FAQs, we expect additional guidance to be issued and for the Guidance itself to be updated in the coming weeks. We will continue to monitor and report on any developments here.

In the meantime, contractors should assess the Guidelines, determine when and how they may apply to their businesses, consider what the impact of the Guidelines will mean for their businesses, and begin planning for implementation now. From our numerous conversations with contractors since the Guidelines were issued, the new requirements present a host of practical challenges for contractors that require careful assessment of the complex and ever-changing legal landscape to determine how best to meet those challenges while also ensuring compliance.

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