TGG Alert – Sweeping Requirements for COVID-19 Workplace Safety

To reduce the spread of COVID-19, the Federal Government is instituting significant requirements for Government contractors

What is Required?

Under the guidance issued by the Safer Federal Workforce Task Force, Federal contractors will be required to implement the following safety protocols:

1. COVID-19 vaccination of employees that work in connection with a covered contract except in cases of a disability (including medical conditions) or because of a "sincerely held religious belief, practice, or observance." Employees must be fully vaccinated by December 8, 2021.
2. Compliance by employees and visitors with guidance on masking and physical distancing while in contractor workplaces. This requirement does not apply to employees who work from a residence.
3. Designation of a person or persons to coordinate COVID-19 workplace safety efforts at contractor workplaces.

Key Dates

- October 8, 2021 – Draft Federal Acquisition Regulation (FAR) Clause to be released to formally institute the new requirements
- October 15, 2021 – Federal agencies are to include the new clause/requirements in all new solicitations and option exercises, also agencies may begin incorporating into new and existing contracts
- November 3, 2021 – All covered contract employees must have received the first vaccination dose in order to be fully vaccinated by the December 8, 2021 requirement deadline
- November 14, 2021 – All new awarded contract must include the new clause/requirements
- December 8, 2021 – All covered employee contractors must be fully vaccinated under existing contracts with the new clause/requirements incorporated
- Post December 8, 2021 – All covered contractor employees must be fully vaccinated by the first day or contract period of performance for all new awards, exercised options, or extended or renewed contracts

Are there exceptions to the rules?

There are several exceptions to the rules, but not many:

- The rules only apply to Federal contractors providing services to the Government, *but* agencies are being encouraged to include the new clause *in as many contracts as possible, even if the contracts are solely for the provision of products*.
  - Contractors that solely provide products to the Government should not assume that these new requirements do not apply to their business.
  - This clause is being added to GSA Schedule contracts, regardless of whether the contractor offers services or products. However, the clause is *not* being applied to VA Schedule contract exclusively for products.
- The rule does not apply to contractor employees who perform work outside the United States.

- The contractor may provide an accommodation to the vaccine requirement for employees in the case of a disability (including medical conditions) or because of a "sincerely held religious belief, practice, or observance."

The guidance also expands on several cases where the Government does *not* provide exceptions to the requirements:

- The rule applies to all employees who work directly or *indirectly* on a Government contract, including human resources, billing, and legal.
- The requirement to receive a vaccine applies to covered employees *regardless* of whether they work in a contractor location or a Federal Government facility.
- The requirement flows down to subcontractors *at all tiers* except for subcontracts solely for the provision of products.

Recommendations for Contractors

- While there are many unanswered questions, it is clear that the guidance reflects the spirit of the Executive Order in encouraging broad application of the requirement to fully vaccinate contractor employees. The exceptions to this order are few and far between – *contractors should assume that they will need to be in compliance with this order by December 8, 2021*.
- Full vaccination is defined as two weeks after the final required dose of a COVID vaccine. *That means companies will need employees to receive their first vaccine does by November 3, 2021 in order to meet the deadline of December 8, 2021.*
- The requirements are broad and apply to a wide cross section of a company's work force and subcontractors. *Contractors should begin working with their human resources and legal departments now (if they have not already) to establish a clear plan of action and communicate that policy and process to all employees and subcontractors before the December 8 deadline.*
- The guidance provides for medical or religious exemptions but does not elaborate on what constitutes a valid basis for such an exemption. The exemption issue puts a contractor in a precarious position. The denial of an exemption request could lead to litigation from the requesting employee, and the granting of a request could lead to litigation from those employees having to work with an unvaccinated co-worker or claims of non-compliance from the Government. *Contractors should establish an internal policy and process in anticipation of this vaccination requirement. They should be able to identify all covered employees, establish a means of documenting the vaccination status of covered employees, and have a fair and consistent process for considering all requests for exemption.*
- Lastly, this clause will require a certification from contractors and like many Government contracts requirements the risk of non-compliance includes up to $23,000 per claim and treble damages under the False Claims Act (FCA). The Government recovered over $2.2 billion through the FCA in 2020 and the Administration has signaled their intent enforce this rule. *Contractors should be aware of potential penalties for non-compliance with this guidance.*

If you have any questions about the COVID-19 requirements, please contact your TGG consultant.

Additional resources

- [President's Executive Order](#)
- [Safer Federal Workforce Task Force Guidance](#)
- [FAR Council Guidance and Instructions for Deviations](#)
- [CAAC Class Deviation and Contract Clause](#)
- [GSA Class Deviation and application to the Schedule Program](#)
- [VA Class Deviation and application to the VA Schedule Program](#)