

**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



September 2021

President Biden Issues COVID-19 Vaccine Mandate for Certain Workers and Federal Contractors and Subcontractors

On Sept. 9, 2021, President Biden issued two executive orders (EOs) with a six-prong strategy to combat the COVID-19 variants, aimed to “save [...] lives [...] while also keeping schools open and safe, and protecting our economy from lockdowns and damage.” The EOs prescribe mandates and recommendations for **federal workers** and **contractors** doing business with the government, private employers, school systems, and the health care industry. These EOs build on **earlier vaccination requirements** for federal workers the president issued in July.

Of particular importance to employers, the EOs set forth a new vaccination requirement for government employees and federal contractors doing business with the government that could affect as many as 100 million Americans. The EOs mandate all employees of the federal executive branch and covered contractors who do business with the federal government to become vaccinated, with no option to test out of the requirement. Covered federal workers, contractors, and subcontractors, who are not exempted for disability or religious reasons, will have 75 days to get fully vaccinated.

It is expected that as of Oct. 15, 2021, the EO will apply to “any new contract; new contract-like instrument; new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract.” The EO is not expected to apply to:

- (i) grants;
- (ii) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended;
- (iii) contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold (\$250,000), as that term is defined in section 2.101 of the Federal Acquisition Regulation;
- (iv) employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or
- (v) subcontracts solely for the provision of products.

Additionally, the president announced he has asked the Occupational Safety and Health Administration (OSHA) to promulgate an Emergency Temporary Standard (ETS) that will require all employers with more than 100 workers in total (not at a single worksite) to enact programs to ensure all employees are vaccinated or otherwise subject to COVID-19 testing weekly. In addition, anticipated regulations from the Department of Labor will require covered employers to provide paid time off for employees to get vaccinated and for any time off to recover from post-vaccination symptoms. This rule is expected to carry penalties of \$14,000 per violation. Although there currently is no clear indication of when this requirement for private employers will take permanent effect, the rule is expected to be issued and published in the Federal Register within weeks. Employers should note that the ETS rule will become effective once it is published in the Federal Register, even though it will be subject to a 60-day comment period. A final rule is expected to be issued within six months of the effective date. Notwithstanding potentially tight deadlines, the White House has stated all workers will have sufficient time to get vaccinated, and Department of Labor officials have indicated that the rule will contain provisions giving guidance on the implementation of the ETS, including who will cover the cost of testing.

State OSHA Plans also are required to adopt the standard set forth in the ETS or a standard at least as stringent as the expected OSHA standards. The 22 State Plans that cover both private sector and state and local government workers, and the six State Plans that cover state and local government have 30 days after the ETS rule's effective date to implement a plan that corresponds with the new federal requirements.

Additionally, the Centers for Medicare & Medicaid Services (CMS) is requiring workers at health care facilities that receive federal Medicare or Medicaid funds to be fully vaccinated, including those who work in hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies. This extends an ETS vaccination requirement issued earlier in summer 2021 requiring staff at nursing home facilities receiving Medicare and Medicaid funds to become vaccinated. Employees of Head Start early childhood education and other federal education programs also must get vaccinated.

Further in response to this announcement, the Department of Defense, the Department of Veterans Affairs, the Indian Health Service, and the National Institutes of Health will fully implement their previously announced vaccination requirements.

Qualifying private employers should also begin implementing measures to comply with the mandate now. Unless ensuing guidance directs otherwise, employers should prepare to engage employees who seek exemption from vaccination for medical and religious reasons in accordance with standard interactive processes for such requests.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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