

FAQ for Federal Contracting Mandate

What is required?

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. The guidance can be found [here](#).
3. Designation of a person or persons to coordinate COVID-19 workplace safety efforts at contractor workplaces.

Which federal contract does this apply to?

All existing contracts that were awarded prior to this requirement and all new federal contracts going forward. This covers both contracts and “contract like instruments.”

What is a contract like instrument?

The Department of Labor definition includes, but is not limited to “mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them.”

This would cover:

- Directly awarded competitive contracts,
- sole source/limited source contracts,
- Government-wide acquisition contracts,
- other multiple award contracts (including the GSA and VA Schedules),
- task orders issued under multiple award contracts.

Where can I find the clause that will be included in all federal contracts?

The clause can be accessed on the [GSA Website](#)

Who are covered employers that must comply?

Almost all federal contractors and subcontractors. Both FAR and non-FAR contractors are covered. As well as contractors and subcontractors. This requirement applies to contracts for services, construction, or leases of federal property, among others. The list includes but is not limited to

- Businesses that sell to the Government
- Businesses that sell to businesses that sell to the Government
- Colleges and universities
- Hospitals and healthcare facilities
- Financial institutions, including participants in GSA’s SmartPay program
- Concessionaires
- Almost any other entity that receives Federal, non-grant dollars.

Is there a limit to how far down the subcontracting chain this applies?

No, not at this time. Third, fourth, fifth, etc. tier contractors would be required to comply as the regulations are drafted.

Am I responsible for verifying my subcontractors are in compliance?

Not exactly. Contractors may assume that their subcontractors are complying with requirements, absent credible evidence otherwise.

What federal contracting is not covered and exempt?

The narrow exemption is limited to:

- Micro-purchases or contracts below the Simplified Acquisition Threshold (\$250,000)
- Site acquisitions
- Disposal of real and personal property
- Contractor employees working outside of the United States and its outlying areas
- Contracts with Indian Tribes under the Indian Self Determination and Education Assistance Act (ISDEAA)

Which of my employees must be fully vaccinated?

The executive order defines “covered contract employees” as the following:

- Any employee working on a federal contract
- Any employee working “in connection with a covered contract
- Any employee who would “come into contact with” the above listed employees at the contractor facilities (ex. Accounting, IT, Sales Support, HR)

What else is required?

- Covered contractors must ensure employees follow CDC protocols as described [here](#)
- Covered contractors must designate a lead person for compliance with the mandate

If I have an existing federal contract, by what date do I have to agree to and comply with the terms of the executive order?

November 14th

Can my unvaccinated workers opt into a testing regime instead of getting vaccinated?

No, being fully vaccinated against COVID is the only way to satisfy the requirement.

What is a fully vaccinated employee?

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 dose by November 3, 2021 in order to meet the deadline of December 8, 2021.

Can workers claim a legitimate religious or medical exemption?

Yes, AIM recommends creating an internal policy for exemptions and applying it in a consistent manner to all employees. The guidance does not provide any formal direction on how to evaluate religious/medical exemptions.

What accommodations should I make to employees who were granted a legitimate religious or medical exemption?

The guidance does not provide what accommodations should be made. AIM recommends creating a consistent policy and applying it to all workers with a valid exemption.

Do I have to terminate my employees who refuse to get vaccinated?

Quite possibly. It will be difficult and potentially inefficient to try to move an unvaccinated employee out of the “covered employee categories”.

What are the penalties for violating the agreement?

- Noncompliant contractors could be considered in breach of their contract and lose it
- Noncompliant contracts could be subject to a whistleblower lawsuit under the False Claims Act. The penalties include up to \$23,000 per claim and treble damages

How will the government enforce this?

AIM anticipates government agencies will seek to diligently enforce the executive order as it is a top White House priority. Also, plaintiffs' lawyers will be active in seeking to file [False Claims Act](#) whistleblower lawsuits.

Does this apply to employees who do not work at Federal Government Facilities?

Yes, it applies to workers involved in the federal contract.

Is this the same thing as private sector OSHA vaccine regulations?

No, OSHA regulations requiring employers with 100 or more employees to either be vaccinated or participate in weekly testing is a separate and distinct regulation. AIM is monitoring the situation and will have updates.

Should employers document the vaccination status of their employees?

AIM strongly recommends that employers take steps starting now to record proof of vaccination among their staff.

Can I just put up a poster and email my employees to notify them to follow the new rules?

No. According to The Guidance, the contractor has the responsibility to “ensure compliance.” While a poster and email explaining the new requirements to employees is a strong first step, mere notice would be insufficient.

To facilitate this internal policing, the Guidance requires contractors to appoint a COVID safety coordinator (who must be a Covered Employee), who will be responsible for providing updated information on the workplace protocols to employees and visitors, and ensuring compliance with such protocols.

I am a covered employer what should I do now?

If you have determined that you’re covered by the EO, we would encourage you to start the administrative process of determining which employees are covered and which have been vaccinated. The more notice – the better.

- Consider emailing employees to notify them of the new Federal requirements, that a corresponding policy will be coming, and to encourage them to provide their vaccination status prior to the deadline.
- Establish a method for collecting (and validating) vaccination information. • Remind employees that their vaccination status will be kept confidential and that all medical information will be kept separate and apart from their personnel information.
- Encourage employees who will be seeking an exemption to notify Human Resources, promptly provide them with any required forms, and begin the interactive process – the earlier this begins, the better!
- Send reminders to employees as the deadline approaches and make plans for any actions you will take for those employees who refuse to be vaccinated.

What are the key dates?

- **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