Client Alert: Biden Administration Issues Guidance to Federal Contractors for Compliance with Vaccine Mandate

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On September 9, 2021, President Biden issued an Order requiring federal contractors to mandate COVID-19 vaccinations and provide other COVID-19 safeguards, as reported in our client alert dated September 10, 2021. On September 24, 2021, the Safer Federal Workforce Task Force responded to President Biden's directive to issue Guidance for Federal Contractors and Subcontractors relative to new COVID-19 workplace safety requirements ("Guidance"). This alert provides a summary of the Guidance.

WHAT ARE THE KEY ELEMENTS OF THE GUIDANCE?

- Covered contractors must ensure all full- and part-time employees are fully vaccinated by December 8, 2021, unless they are entitled to an accommodation.
- After December 8, 2021, all contractor employees must be fully vaccinated by the first day of the period of performance on any federal contract.
- Employees of covered contractors will be required to provide documentation to prove vaccination status. Employees may show either a hard or digital copy of their vaccination card (or another approved record of vaccination) reflecting immunization.
- Masking and physical distancing requirements exist for employees, visitors, and other individuals in covered contractor workplaces.
- Covered contracts must include a clause providing that the contractor shall comply with the Guidance for the duration of the contract.
- "Covered contractor" includes any prime contractor or subcontractor at any tier who is party to a covered contract.

WHAT ARE THE EXCEPTIONS TO THE VACCINE MANDATE?

- Employees may communicate a need for an accommodation because of a disability/medical condition or sincerely held religious belief. Covered contractors must review each such request for an accommodation on a case-by-case basis and consider what accommodation it must offer.
- If a federal agency has an "urgent, mission-critical need" for a covered contractor to have employees work before becoming fully vaccinated, the agency head may approve an exception in limited circumstances. In such cases, the contractor must ensure its employees are fully vaccinated within 60 days of beginning work.

WHAT ABOUT MASKS AND PHYSICAL DISTANCING?

- Covered contractors must ensure all individuals, including employees and visitors, comply with CDC guidance on

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masking and physical distancing.

- Fully vaccinated individuals:
  - Must wear a mask indoors in areas of high or substantial community transmission.
  - Do not need to wear a mask in areas of low or moderate community transmission.
  - Do not need to physically distance regardless of the level of transmission in the area.

- Unvaccinated individuals:
  - Must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of transmission in the area.
  - Should maintain physical distance of at least six feet from others at all times.

WHAT ARE THE EXCEPTIONS ON MASKS AND PHYSICAL DISTANCING?

- Employees may communicate a need for an accommodation to the mask requirement because of a disability/medical condition or sincerely held religious belief. Covered contractors must review each such request for an accommodation on a case-by-case basis and consider what accommodation it must offer.
- Covered contractors may provide exceptions to mask wearing and physical distancing requirements consistent with CDC guidelines. A duly authorized representative of the contractor must approve any exception in writing. Examples of exceptions provided in the Guidance include:
  - When an individual is alone in an enclosed office with the door closed
  - When employees engage in activities in which a mask may get wet
  - When employees engage in high-intensity activities during which wearing a mask would make it difficult to breathe
  - When employees engage in activities for which wearing a mask would create a risk of workplace health, safety, or job duty

WHAT ELSE DOES THE GUIDANCE REQUIRE REGARDING MASKS?

- Individuals who are required by this Guidance to wear a mask must wear appropriate masks properly fitting over the nose and mouth, and must wear them in all common areas or shared workspaces.
- Individuals who are not fully vaccinated must wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with others who are not fully vaccinated.
- Masked individuals may be asked to lower their masks briefly for identification purposes.
- Covered contractors are expected to check the CDC COVID-19 Data Tracker County View website for information on community transmission levels at least weekly to ensure compliance with masking requirements.

WHAT ARE SOME OTHER KEY ELEMENTS OF THE GUIDANCE FOR COVERED CONTRACTORS TO KNOW?

- Covered contractors must designate a person to coordinate COVID-19 workplace safety efforts including implementation of this Guidance. This person is responsible for communicating information relating to vaccines, masking, and physical distancing and all COVID-19 safety protocols to employees, visitors, and other individuals as applicable. This person also will be responsible for compliance with the requirement to show proof of vaccination.
- The Guidance offers an extensive Frequently Asked Questions section. Covered contractors are encouraged to

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review the FAQ in its entirety but a few highlights from the FAQ are as follows:

- Employees who have had COVID-19 are not exempted from the vaccine requirement, and a recent antibody test cannot be used to prove vaccination status.
- An employee who is authorized to work from home still must comply with the vaccination requirement even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract.
- For contracts awarded prior to October 15 where performance is ongoing, contractors must incorporate the requirements of the Guidance at the point when an option is exercised or an extension is made.
- For new contracts, the requirements must be incorporated into contracts awarded on or after November 14.
- The requirements apply to all subcontractors at all tiers (except for subcontracts solely for the provision of products).
- The requirements apply to covered contractor employees working on, or in connection with, a covered contract. "In connection with" means those employees who are offering support services to the contract work (such as human resources, billing, legal review) but are not themselves performing the work called for by the contract.
- The requirements also apply to employees who work at a covered contractor workplace, which includes those who are not themselves working on or in connection with a covered contract.

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