

TYPES NOT MAPPED YET September 28, 2021 | TTR not mapped yet | Jayna Marie Rust

12 answers: The federal contractor vaccine and masking requirements

As explained in our [prior overview of Executive Order 14042](#), “Ensuring Adequate COVID Safety Protocols for Federal Contractors” (the “Contractor COVID Executive Order”), the order requires Federal contractors and subcontractors (both referred to as “contractors” in this article) with covered contracts (and subcontracts) to comply with guidance from the Safer Federal Workforce Task Force (“Task Force”).¹ On September 24, 2021, the Task Force issued that guidance, the [“COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors”](#) (“Task Force Guidance”).

The Task Force Guidance applies to a broad swath of employees and contractor work sites and contains three overarching requirements, although the third is really a mechanism to ensure enforcement of the first two. These requirements are:

1. “COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;”
2. “Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces;” and
3. “Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.”

The rest of this article delves further into the Task Force Guidance to answer questions about the three requirements as well as the other main area that the Contractor COVID Executive Order left to the Task Force: which “workplace locations” are covered.

Employee vaccinations

Who must a contractor require to be vaccinated?

- All covered contractor employees, unless they are legally entitled to an accommodation. Covered contractor employees include:
 - Any “full-time or part-time employee of a covered contractor working on or in connection with a covered contract” Similar to the contractor paid-sick-leave and contractor minimum-wage regulations, the Task Force Guidance considers an employee to be working “in connection with” a covered contract if he/she performs “duties necessary to the performance of the covered contract” but is not “directly engaged in performing the specific work called for by the covered contract” Unlike those regulations, however, the Task Force Guidance does not exclude employees working “in connection with” a contract for less than 20% of their work week.
 - Any full-time or part-time employee of a covered contractor working at a covered contractor workplace (discussed further below), including employees “who are not themselves working on or in connection with a covered contract.”
- There are no exceptions made for employees that have previously been infected with COVID-19 or for employees who provide recent antibody tests.

By when must a contractor require that they be vaccinated?

- For a newly awarded covered contract: Covered contractor employees must be fully vaccinated by December 8, 2021 or the first day of the period of performance (whichever is later).
- For an option/extension of an existing contract that has been modified to include the clause: Covered contractor employees must be fully vaccinated by December 8, 2021 or the first day of the period of performance of the option or extension (whichever is later).

What can a contractor rely on to ascertain employees' vaccination status?

- Employees must show or provide the contractor/employer with one of the enumerated forms of documentation.
- The contractor may not rely on an employee's representation or self-certification.

Must a contractor pay for on-site vaccinations?

- No. Contractors are not required to provide onsite vaccinations for employees.

Masks and physical distancing for employees and visitors

At what locations do the Task Force Guidance requirements on masks and physical distancing apply?

- It applies to all covered contractor workplaces, which are discussed further below.

Who must wear masks?

- Fully-vaccinated employees and visitors:
 - In areas of "high or substantial community transmission": Must wear a mask in indoor settings, except for limited exceptions.
 - In areas of "low or moderate community transmission": Masks are not required (as of now).
- For employees and visitors who are not fully vaccinated:
 - Regardless of level of community transmission: Must wear a mask indoors and in certain outdoor settings.

Where must a contractor require these individuals to wear masks?

- For all employees and visitors that must wear masks, the contractor must require them to wear them in any common areas or shared workspaces.
- For employees and visitors who are not fully vaccinated, the contractor must also require them in crowded outdoor settings or "during outdoor activities that involve sustained close contact with other people who are not fully vaccinated."

When must a contractor require employees and visitors to practice physical distancing?

- Fully-vaccinated employees and visitors:
 - Regardless of level of community transmission: Not required to physically distance.
- For employees and visitors who are not fully vaccinated:
 - Regardless of level of community transmission: "To the extent practicable . . . should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

How quickly can/may a contractor change its masking and physical-distancing requirements based on changed levels of community transmission?

- If the level has increased from low or moderate community transmission to substantial or high transmission, contractors should put in place more protective workplace safety protocols to match the level of community transmission.
- If the level has decreased from substantial or high transmission to moderate or low transmission, the level must remain at the lower level for at least two consecutive weeks before the contractor changes its protocols to match the areas of moderate or low community transmission.

Coordinator of COVID-19 workplace safety efforts

What activities must the coordinator(s) do for the contractor?

- Coordinate implementation of and compliance with the Task Force Guidance at covered contractor workplaces.
- Ensure the contractor provides “information on required COVID-19 workplace safety protocols,” which includes vaccinations, masking, and physical distancing, to covered contractor employees and visitors.
- Ensure covered contractor employees show or provide the contractor “proper vaccination documentation.”
- At least weekly check community transmission levels in all areas where the contractor has a covered contractor workplace. ²

Workplace location

What locations are “covered contractor workplace locations”?

- Locations that are controlled by the contractor where employees are working “on or in connection with the covered contract” or “are likely to be present.”
- It does not include a covered contractor employee’s residence.

What is a “location”? Can a contractor limit the application to a single floor, building, site, or facility?

- A contractor can limit the application to one of the above locations if the contractor “can affirmatively determine that none of its employees” on another floor, building, site, or facility will, for the period of performance of the covered contract, come into contact with a covered contractor employee (a “full-time or part-time employee of a covered contractor working on or in connection with a covered contract” or any full-time or part-time employee that works at their same workplace).

Although the Task Force Guidance answers many industry questions, there are still some questions left unanswered. Hopefully, the implementing contract clauses (that will be issued sometime in or before October) will answer many of those questions. Nevertheless, companies preparing to submit bids or proposals for covered Government work and contractors who have contracts with open options or extensions must stay vigilant in monitoring updates to the Task Force Guidance. Indeed, the Contractor COVID Executive Order did not explicitly mandate the three overarching requirements in the guidance, so the Government may quickly pivot and increase mandates for covered contractors through updates to the Task Force Guidance.

Jayna Marie Rust is an associate in Thompson Coburn’s Washington, D.C. office. She counsels clients on Federal contract- and grant-administration matters. She also represents Government contractors in connection with claims, protests, and disputes.

1. This article does not detail which contracts are covered under the Contractor COVID Executive Order, which was discussed in our [prior article](#). We do note, however, that the Task Force Guidance encourages agencies to include a clause requiring compliance with the guidance in contracts even if the contract is not covered by the Contractor COVID Executive Order (such as those below the simplified acquisition threshold). [↔](#)
2. The Task Force Guidance does not specifically require the coordinator to be responsible for this task but does require the contractor to check this weekly. [↔](#)

authorsTest



jayna

Jayna Marie Rust