

TYPES NOT MAPPED YET September 10, 2021 | TTR not mapped yet | Jayna Marie Rust

A two-minute overview of the September 9 executive order on contractor “vaccines”

President Biden stated in yesterday’s late-afternoon address to the nation that he would require all executive-branch employees and federal contractors to be vaccinated. Following President Biden’s speech, the White House issued the [Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees](#) and the [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) (the “Contractor COVID Executive Order”). Interestingly, the Contractor COVID Executive Order does not explicitly mention vaccinations, but it does require contractors and subcontractors to comply with guidance that the Administration’s newly created Safer Federal Workforce Task Force will publish no later than September 24 (“Task Force Guidance”).

We anticipate that such guidance will include vaccination requirements. Although details of the guidance are not yet available, the Contractor COVID Executive Order does provide information that contractors and subcontractors can use to understand the applicability of the likely vaccination and other new obligations that will come from the Task Force Guidance. Notably:

- The compliance requirements generally will be implemented through solicitation and contract clauses beginning on specified dates in October. The clauses will be required in new contracts (and their corresponding solicitations) and options/extensions for existing contracts.
- The compliance requirements will generally apply to contracts or similar instruments for services and construction. The requirements will also apply to companies beyond those with procurement contracts as it includes leases, concessions contracts, and contracts “in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.” As some contractors will note, these are strikingly similar to the agreements covered by Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors,” which increases the contractor minimum wage to \$15/hour. (More details on that executive order and the proposed rule are in [this article](#)).
- The contract clause(s) will apply “to any workplace location (as specified by the Task Force Guidance) in which an individual is working on or in connection with a Federal Government contract or contract-like instrument.”

The Contractor COVID Executive Order does not address the current COVID-19 vaccination and testing requirements for on-site contractors. Thus, those contractors should expect to continue to be subject to the existing requirements unless and until they receive further guidance (or a contract amendment for an option/extension) stating otherwise.

Additionally, President Biden announced during his speech that the Department of Labor is developing an emergency rule that will apply to all employers with 100 or more employees. Importantly, the emergency rule is expected to apply irrespective of whether the employer is a federal contractor or subcontractor because it is being issued under the authority of the Occupational Safety and Health Act. Thus, even if a company is not covered by the Contractor COVID Executive Order, it may still be subject to vaccination/testing requirements under the forthcoming Department of Labor rule. The White House’s [“Path out of the Pandemic” page](#) states the following about the expected rule:

The Department of Labor’s Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.



Thompson Coburn's Government Contracts Group is monitoring the latest developments regarding the government's COVID-19 response and its effect on the federal contracting and business communities.

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