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# An Overview of the Federal Employee and Onsite Federal Contractor COVID-19 Vaccination Mandate

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On September 9, 2021, President Joe Biden signed Executive Order 14043 and Executive Order 14042 (the “Executive Order”), which issued federal directives that all federal employees, whether working onsite or remotely; and all federal contractors who work onsite at federal locations, are to be fully vaccinated by November 22, 2021, subject to such legal exemptions or reasonable accommodation required by law (the “Mandate”). Prior to the Executive Order, unvaccinated federal employees could choose to take a weekly COVID-19 test in lieu of being vaccinated. Under the new Mandate, this option is no longer available.

The Safer Federal Workforce Task Force (the “Task Force”) oversees the implementation of the Executive Order. Under the direction of the Task Force, each federal agency, to the extent consistent with applicable law, will create and implement a program to mandate the COVID-19 vaccinations for its federal employees.

Because there are several choices of COVID-19 vaccines, which may require separate doses, there are specific timelines that must be met to comply with the November 22<sup>nd</sup> fully vaccinated date. The term “fully vaccinated” means that two weeks have passed since the federal employee received a single-shot vaccine or the second dose of a two-shot vaccine, so the last dose must be administered by November 8, 2021. For example:

1. **Pfizer-BioNTech:** Two doses, which is generally administered three weeks apart. If you are taking the Pfizer vaccine, then you must receive your first shot by **October 18<sup>th</sup>**.
2. **Moderna:** Two doses, which is generally administered four weeks apart. If you are taking the Moderna vaccine, then you must receive your first shot by **October 11<sup>th</sup>**.
3. **Johnson & Johnson:** One dose. You must receive your vaccine shot by **November 8<sup>th</sup>**.

New hire federal employees who start on or after November 22<sup>nd</sup>, must be fully vaccinated when their employment begins, unless an exception or accommodation is legally required. Limited exceptions may also be available if an agency has an “urgent, mission-critical” hiring need.

Federal contractors, who work on site at federal locations, are required to comply with the same COVID-19 vaccination Mandate as federal employees. Onsite federal contractors will need to “attest to the truthfulness of the response they provide” using the Certification of Vaccination Form, and if the contractor chooses not to respond, they will be treated as though they are not fully vaccinated. For onsite federal contractors who are not yet subject to contractual requirements to be vaccinated, agencies should not ask the contractor for documentation to verify their attestation. If an agency has reasonable grounds to believe that an onsite contractor made a false statement

on the Certification of Vaccination Form, then the agency may require that the contractor verify with vaccination documentation and confirm to the agency that the contractor has been vaccinated. *\*Further guidance from the Task Force regarding all federal contractors, whether working onsite or providing products and services, will be forthcoming.*

## **FAQs for the Mandate**

### **1. Are there exceptions or reasonable accommodations to the Mandate?**

1. **Answer:** Yes, limited exceptions are available. A government agency may be required to provide a reasonable accommodation to federal employees who communicate to the agency that the employee cannot receive a COVID-19 vaccination, because among other things, a disability, or because of a sincerely held religious belief, practice, or observance.

### **2. How do you receive a legal exception or reasonable accommodation?**

19. **Answer:** The agency will determine the exception or accommodation with such factors as – (1) the basis of the claims, (2) the nature of the employee’s job responsibilities, and (3) the reasonably foreseeable effects on the agency’s operations, which include protecting other agency employees and the public from COVID-19. These factors and assessments will be fact intensive questions; therefore, agencies are encouraged to consult with their offices of general counsel.

An agency should follow its ordinary process to review and consider what, if any, reasonable accommodation it must offer. If the federal employee’s request for an accommodation is denied, and the employee does not comply with the vaccination requirement, then the agency may pursue disciplinary action, up to and including termination.

*\*Additional guidance on the legally required exceptions will be forthcoming by the Task Force*

### **3. How will the Mandate be enforced?**

1. **Answer:** If by November 22, 2021, the federal employee continues to refuse to be vaccinated or provide proof of vaccination, then the agency may pursue disciplinary measures and take an adverse action against the employee, which may include termination. If the employee is terminated, then the agency must follow all protocols and procedures, which include informing the employee of his or her procedural rights. The Task Force provided guidance to the agencies that federal employees should **not** be placed on administrative leave while pursuing an adverse action for refusal to be vaccinated. Instead, the employee will be required to follow certain safety protocols when reporting to agency worksites.

### **4. Will a federal employee be required to provide proof of vaccination?**

1. **Answer:** Yes. Agencies must require documentation from federal employees to prove vaccination, even if an employee has previously attested to their vaccination status. Documentation can be a digital copy. For example, an employee may provide – (1) a copy of the record of immunization from a health care provider or pharmacy, or (2) a copy of any other official documentation containing required data points. Furthermore, federal employees must certify under penalty of perjury that the documentation they are submitting is true and accurate.

Agencies will also collect certain vaccine information necessary to verify that an employee is fully vaccinated, which may include the type of vaccination received, the number of doses received, and the date the vaccine was administered of each dose. Agencies are also able to develop additional processes, systems, tools, and applications to collect and maintain employee vaccination records.

*\*As a general rule, the employee’s vaccine information should not be maintained in the employees Official Personnel Folder.*

### **5. Who will have access to the employee’s vaccination information?**

1. **Answer:** The Privacy Act permits the disclosure of the information within the agency to employees “who have a need for the record

in performance of their duties.” Therefore, agencies should only disseminate information to the appropriate agency officials who have a need to know to ensure effective implementation of the safety protocols, which, in many cases, will include the supervisor level.

Should you have any questions about the new Federal Employee COVID-19 Mandate, please contact Nathan Duggins at [nduggins@tuggleduggins.com](mailto:nduggins@tuggleduggins.com) or (336) 271-5246, Ross Hamilton at [atrhamilton@tuggleduggins.com](mailto:atrhamilton@tuggleduggins.com) or (336) 271-5279, Natalie Folmar at [nfolmar@tuggleduggins.com](mailto:nfolmar@tuggleduggins.com) or (336) 271-5220.

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[1] The Safer Federal Workforce Task Force was established by Executive Order 13991 on January 20, 2021. The Task Force is led by the White House COVID-19 Response Team, the General Services Administration (GSA), and the Office of Personnel Management (OPM). Task Force members include: the Centers for Disease Control and Prevention (CDC), the Department of Veterans Affairs (VA), the Federal Emergency Management Agency (FEMA), the Federal Protective Service (FPS), the Office of Management and Budget (OMB), and the United States Secret Service (USSS). The President created the Task Force to give the heads of federal agencies ongoing guidance to keep their employees safe and their agencies operating during the COVID-19 pandemic.

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