

# COMPLIANCE BULLETIN

## COVID-19 Workplace Safety Guidance for Federal Contractor and Subcontractors

On Sept. 24, 2021, the Safer Federal Workforce Task Force (Task Force) released new [guidance](#) (the Guidance) on COVID-19 workplace safety protocols for federal contractors and subcontractors. The goal of the Guidance is to get more people vaccinated.

The Guidance requires each covered contract and contract-like instrument to include a clause requiring the contractor and their subcontractors to comply with all guidelines for workplace locations published by the Task Force.

These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a federal government contract or contract-like instrument.

Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

- COVID-19 vaccination;
- Masking and physical distancing; and
- Appointment of COVID-19 coordinators.

### Action Steps

Covered contractors must review and adhere to the requirements of the Guidance. They are also responsible for ensuring that covered contractor employees comply with workplace safety protocols.

Provided to you by **AdvanStaff HR**

### Covered Contractor Employee

Any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace.

This includes employees of covered contractors who are not working on or in connection with a covered contract, but does not include contractor employees who only perform work outside the United States or its outlying areas.

### Important Dates

#### Dec. 8, 2021

Covered contractor employees must be fully vaccinated unless the employee is legally entitled to an accommodation.





## Covered Contractor Guidance

Covered contractor employees must comply with agency COVID-19 workplace safety requirements while in federal workplaces. Agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the executive order—[Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors](#) (the order) because the contractor is under the Simplified Acquisition Threshold as defined in [section 2.101](#) of the [Federal Acquisition Regulation](#) (FAR) or is a contract or subcontract for the manufacturing of products.

### Covered Contractors

Federal contractors are subject to the Guidance if they have a covered contract. Covered contractors include executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act.

Covered contracts include any new contract; contract-like instrument; solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument, if it is a:

- Procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;
- Contract or contract-like instrument for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq.;
- Contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
- Contract or contract-like instrument entered into with the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

The Guidance does not apply to (i) grants; (ii) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended; (iii) contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as the term is defined in section 2.101 of the Federal Acquisition Regulation; (iv) employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or (v) subcontracts solely for the provision of products.

### Vaccination Requirements

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19 unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated **no later than Dec. 8, 2021**. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

Covered contractors may be required to provide accommodations to covered contractor employees who communicate to their covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or a sincerely held religious belief, practice or observance. Covered contractors should review and



consider what accommodations they must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for disability accommodations.

Should a federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor. In the case of such limited exceptions, covered contractors must ensure these covered contractor employees are fully vaccinated **within 60 days** of beginning work on a covered contract or at a covered workplace. Covered contractors must further ensure that such employees comply with masking and physical distancing requirements in covered workplaces prior to being fully vaccinated.

Covered contractors must review their covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide one of the following copies:

- The record of immunization from a health care provider or pharmacy;
- The COVID-19 vaccination record card;
- Medical records documenting the vaccination;
- Immunization records from a public health or State immunization information system; or
- Any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine.

Covered contractors may allow covered contractor employees to show or provide their employer with a digital copy of such records, including a:

- Digital photo;
- Scanned image; or
- PDF of such a record.

Covered contractors must ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation. They are strongly encouraged to incorporate similar vaccination requirements into their noncovered contracts and agreements with noncovered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a federal contract (e.g., such as those contracts and agreements related to the provision of food services, on-site security or groundskeeping services at covered contractor workplaces).

## Face Coverings and Physical Distancing

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published Centers for Disease Control and Prevention (CDC) guidance for masking and physical distancing at a covered contractor workplace. In addition to the face coverings and physical distance guidance, contractors must follow applicable CDC guidance for mask-wearing and physical distancing in specific settings, including health care, transportation, correctional and detention facilities, and schools.

Fully vaccinated individuals must wear a mask in indoor settings, except for limited exceptions in areas of high or substantial community transmission. In addition, fully vaccinated individuals do not need to wear a mask in areas of low or moderate community transmission, nor do they need to physically distance, regardless of the level of transmission in the area.

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Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings, regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least 6 feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common area or shared workspace (including open floorplan office spaces, cubicle embankments and conference rooms).
- Wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

Covered contractors may be required to provide an accommodation to covered contractor employees that cannot wear masks because of a disability or because of a sincerely held religious belief, practice or observance. Covered contractors should review and consider what accommodation they must offer. Covered contractors may provide exceptions to face covering and/or physical distancing requirements consistent with CDC guidelines. They may also provide exceptions for covered contractor employees who are unable to wear a mask because of difficulty breathing or activities for which wearing a mask would create a risk to workplace safety as determined by a workplace risk assessment. Any exceptions must be approved in writing by an authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces.

Employees with face coverings may be asked to lower their face coverings briefly for identification purposes in compliance with safety and security requirements. At least weekly, covered contractors must check the [CDC COVID-19 Data Tracker County View](#) for community transmission information in all areas with a covered contractor workplace to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines.

However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, it must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

## **COVID-19 Workplace Safety Coordinator**

Covered contractors must designate one or more workers to coordinate implementation of and compliance with this Guidance. The COVID-19 coordinator(s) may be the same individual(s) responsible for implementing any COVID-19 workplace safety protocols required by local, state or federal law. Their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

These coordinators must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces. This includes communicating required workplace safety protocols and related policies by email, websites, memoranda, flyers or other means.



Coordinators should also post signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. Coordinator(s) must also ensure that covered contractor employees comply with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

## Frequently Asked Questions

### Vaccination and Safety Protocols

**Q1: How do covered contractors determine the vaccination status of visitors to covered contractor workplaces?**

**A:** Covered contractors should post signage at entrances to covered contractor workplaces providing information on safety protocols for fully vaccinated and not fully vaccinated individuals, including the protocols defined in the masking and physical distancing requirements. Signage should also instruct individuals to follow the appropriate workplace safety protocols while at the covered contractor workplace. Covered contractors may take other reasonable steps, such as:

- Communicating workplace safety protocols to visitors prior to their arrival at a covered contractor workplace; or
- Requiring all visitors to follow masking and physical distancing protocols for not fully vaccinated individuals.

**Q2: Do covered contractors need to provide on-site vaccinations to their employees?**

**A:** Covered contractors should ensure their employees are aware of convenient opportunities to be vaccinated. Although covered contractors may choose to provide vaccinations at their facilities or workplaces, covered contractors are not required to do so, given the widespread availability of vaccinations.

**Q3: What should a contractor employee do if a covered contractor employee has lost or does not have a copy of required vaccination documentation?**

**A:** If covered contractor employees need new vaccination cards or copies of other documentation proof of vaccination, they should contact the vaccination provider site where they received their vaccine. Their provider should be able to provide them with new cards or documentation with up-to-date information about the vaccinations they have received. If the location where the covered contractor employees received their COVID-19 vaccine is no longer operating, the covered contractor employees should contact their State or local health department’s [immunization information system \(IIS\)](#) for assistance. Covered contractor employees should contact their [State or local health department](#) if they have additional questions about vaccination cards or vaccination records.

An attestation of vaccination by the covered contractor employee is not an acceptable substitute for documentation of proof of vaccination.

**Q4: Who is responsible for determining if a covered contractor employee must be provided an accommodation because of a disability or a sincerely held religious belief, practice or observance?**

**A:** Covered contractors may be required to provide an accommodation to contractor employees who communicate to the covered contractor that they are not vaccinated for COVID-19 or that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice or observance. Covered contractors should review and consider what, if any, accommodation they must offer. Contractors are responsible for considering and dispositioning such requests for accommodations regardless of the covered contractor employee’s place of performance. If the agency that is the party to the covered contract is a “joint employer” for purposes of compliance



with the Rehabilitation Act and Title VII of the Civil Rights Act, both the agency and the covered contractor should review and consider what, if any, accommodation they must offer.

**Q5: Are covered contractor employees who have a prior COVID-19 infection required to be vaccinated?**

**A:** Yes, covered contractor employees who have had a prior COVID-19 infection are required to be vaccinated.

**Q6: Can a covered contractor accept a recent antibody test from a covered contractor employee to prove vaccination status?**

**A:** No. Covered contractors cannot accept a recent antibody test from a covered contractor employee to prove vaccination status.

## Workplaces

**Q7: Does this Guidance apply to outdoor contractor or subcontractor workplace locations?**

**A:** Yes, this Guidance applies to contractor or subcontractor workplace locations that are outdoors.

**Q8: If a covered contractor employee is likely to be present during the period of performance for a covered contract on only one floor or a separate area of a building, site or facility controlled by a covered contractor, do other areas of the building, site or facility controlled by a covered contractor constitute a covered contractor workplace?**

**A:** Yes, unless covered contractors can affirmatively determine that none of their employees on another floor or in separate areas of the building will come into contact with other covered contractor employees during the period of performance of a covered contract. This would include affirmatively determining that there will be no interactions between covered contractor employees and noncovered contractor employees in those locations during the period of performance on a covered contract, including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas and parking garages.

**Q9: If a covered contractor employee performs their duties in or at only one building, site or facility on a campus controlled by a covered contractor with multiple buildings, sites or facilities, are the other buildings, sites or facilities controlled by a covered contractor considered a covered contractor workplace?**

**A:** Yes, unless covered contractors can affirmatively determine that none of their employees in or at one building, site or facility will come into contact with other covered contractor employees during the period of performance of a covered contract. This would include affirmatively determining that there will be no interactions between covered contractor employees and noncovered contractor employees in those locations during the period of performance on a covered contract, including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

**Q10: Are the workplace safety protocols enumerated above the same irrespective of whether the work is performed at a covered contractor workplace or a federal workplace?**

**A:** Yes. The Guidance applies to all covered contractor employees and all contractor or subcontractor workplace locations. While at a federal workplace, covered contractor employees must also comply with any additional agency workplace safety requirements for that workplace. Because covered contractor employees working on a covered contract need to be fully vaccinated after Dec. 8, 2021, covered contractor employees who work only at a federal workplace need to be fully vaccinated by that date as well, unless legally entitled to an accommodation.

**Q11: How does this Guidance apply to covered contractor employees authorized under the covered contract to perform work remotely from their residence?**



**A:** An individual working on a covered contract from their residence is a covered contractor employee and must comply with the vaccination requirement for covered contractor employees, even if the employee never works at either a covered contractor workplace or federal workplace during the performance of the contract. A covered contractor employee's residence is not a covered contractor workplace; so, while in the residence, the individual need not comply with requirements for covered contractor workplaces, including those related to masking and physical distancing, even while working on a covered contract.

## Scope and Applicability

### **Q12: By when must the requirements of the order be reflected in contracts?**

**A:** Section 6 of the order lays out a phase-in of the requirements for covered contracts as follows:

- Contracts awarded prior to Oct. 15 where performance is ongoing—The requirements must be incorporated at the point at which an option is exercised or an extension is made.
- New contracts—The requirements must be incorporated into contracts awarded on or after Nov. 14, 2021. Between Oct. 15 and Nov. 14, 2021, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after Oct. 15, 2021.

### **Q13: Must the order's requirements be flowed down to all lower-tier subcontractors, and, if so, who is responsible for flowing the clause down?**

**A:** Yes. The requirements in the order apply to subcontractors at all tiers, except for subcontracts solely for the provision of products. The prime contractor must flow the clause down to first-tier subcontractors; higher-tier subcontractors must flow the clause down to the next lower-tier subcontractor, to the point at which subcontract requirements are solely for the provision of products.

### **Q14: Does the Guidance apply to small businesses?**

**A:** Yes, the requirement to comply with this Guidance applies equally to covered contractors regardless of whether they are a small business. This broad application of COVID-19 guidance will more effectively decrease the spread of COVID-19, which, in turn, will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at workplaces where they are performing work for the federal government.

### **Q15: What steps are being taken to promote consistent application of the order's requirements across agencies?**

**A:** The FAR Council will conduct a rulemaking to amend the FAR to include a clause that requires covered contractors performing under FAR-based contracts to comply with this Guidance for contractor and subcontractor workplace locations. Prior to rulemaking, by Oct. 8, 2021, the FAR Council will develop a clause and recommend that agencies exercise their authority to deviate from the FAR using the procedures set forth in subpart 1.4. Agencies responsible for contracts and contract-like instruments that are not subject to the FAR, such as concession contracts, will be responsible for developing appropriate guidance by Oct. 8, 2021, to incorporate requirements into their covered instruments entered into on or after Oct. 15, 2021.

### **Q16: If the Safer Federal Workforce Task Force updates this Guidance to add new requirements, do those requirements apply to existing contracts?**

**A:** Yes. Covered contractors are required to, for the duration of the contract, comply with all Task Force Guidance for contractor or subcontractor workplace locations, including any new guidance where the Office of Management and

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Budget (OMB) director approves the Guidance and determines that adherence to the Guidance will promote economy and efficiency in federal contracting. The Task Force and OMB plan to ensure all workplace safety protocols reflect what is necessary to decrease the spread of COVID-19.

**Q17: What constitutes work performed “in connection with” a covered contract?**

**A:** Employees who perform duties necessary to the performance of the covered contract but who are not directly engaged in performing the specific work called for by the covered contract, such as human resources, billing and legal review, perform work in connection with a federal government contract.

**Q18: Do the workplace safety protocols in the Guidance apply to covered contractor employees who perform work outside the United States?**

**A:** No. The workplace safety protocols in the Guidance do not apply to covered contractor employees who only perform work outside the United States or its outlying areas, as these terms are defined in section 2.101 of the FAR Compliance.

**Q19: Does this clause apply in States or localities that seek to prohibit compliance with any of the workplace safety protocols set forth in this Guidance?**

**A:** Yes. These requirements are promulgated pursuant to federal law and supersede any contrary State or local law or ordinance. Additionally, nothing in this Guidance must excuse noncompliance with any applicable State law or municipal ordinance establishing more protective workplace safety protocols than those established under this Guidance.

**Q20: Can a covered contractor comply with workplace safety requirements from the Occupational Safety and Health Administration, including pursuant to any current or forthcoming Emergency Temporary Standard related to COVID-19, instead of the requirements of this Guidance?**

**A:** No. Covered contractors must comply with the requirements set forth in this Guidance regardless of whether they are subject to other workplace safety standards.

**Q21: What is the prime contractor’s responsibility for verifying that subcontractors are adhering to the mandate?**

**A:** The prime contractor is responsible for ensuring that the required clause is incorporated into its first-tier subcontracts in accordance with the implementation schedule set forth in section 6 of the order. When the clause is incorporated into a subcontract, a subcontractor is required to comply with this Guidance and the workplace safety protocols detailed herein. Additionally, first-tier subcontractors are expected to flow the clause down to their lower-tier subcontractors in a similar fashion so that accountability for compliance is fully established throughout the federal contract supply chain for covered subcontractor employees and workplaces at all tiers through the application of the clause.

*Source: [Safer Federal Workforce](#)*