

## DOL Issues Vaccine Mandate Guidance for Federal Contractors

A couple of weeks ago, **we blogged about** an Executive Order on vaccine mandates for federal contractors and employers with 100+ employees. This **Executive Order** addresses the approach for federal contractors, and **the plan itself** directs the Occupational Safety and Health Administration (OSHA) to initiate rulemaking for certain private employers. Because credit unions are considered federal contractors for certain Department of Labor (DOL) rules for affirmative action plans, there were questions about the scope of the mandate in the Executive Order. On Friday, September 24, 2021, the DOL **issued guidance for federal contractors** that may help clarify some issues. There is a section defining terms, followed by the specific requirements that fit into three categories: vaccinating employees; masking and social distancing; and designating staff to be responsible for compliance. The guidance ends with a series of questions and answers clarifying some specifics.

A few things to note – federal contractors covered by the guidance will need to have employees fully vaccinated by December 8, 2021. Also, this applies to new contracts awarded on or after November 14, 2021. These agreements will include the vaccine and mask/social distancing requirements. For contracts entered into before October 15, 2021, that have ongoing performance, Question #12 says “the requirements must be incorporated at the point at which an option is exercised or an extension is made.”

The guidance may also conflict with state or local law in some instances, but Question #19 says this guidance supersedes any state or local guidance.

The Executive Order has a section on applicability of the mandate for federal contractors, with language focused on entities that contract with the federal government as opposed to being a federally insured entity. The guidance points to this language and defines some key terms that may help a credit union determine whether it is a federal contractor subject to this guidance, and how to comply if it is applicable. Here are some of the key pieces and high-level summaries of the requirements.

### **Contract or Contract-like Instrument**

This definition is key to determining which kinds of agreements would make an entity a federal contractor and thus subject to the vaccine mandate. The guidance refers back to a **proposed rule** that sets a minimum wage for employees of federal contractors. There is a rather detailed description of the kinds of agreements that are covered, which include but are not limited to “a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them.” This could include, among other things, procurement actions, lease agreements, provider agreements, and service agreements. The definition goes on to refer to federal

procurement regulations and a **federal statute** that applies to federally funded contracts for work performed on public buildings as well as the Service Contract Act. Contracts also include agreements that are “in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.” A credit union doing business with the federal government, or that has a lease or other agreement to provide services on federal government property, are among those that would seem to be covered here. Examples may include those credit unions with branches inside federal government buildings or on military bases.

### **Covered Employees**

The guidance applies to both full and part-time employees “working on or in connection with a covered contract.” Question #11 addresses remote workers and states that these employees are also subject to the vaccine mandate. This is true “even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract.”

### **Employees Must Be “Fully Vaccinated”**

An employee is considered fully vaccinated two weeks after receiving the second dose of a two-dose vaccine (e.g. Moderna or Pfizer-BioNTech), or two weeks after receiving a single dose vaccine (Johnson & Johnson/Janssen). In addition to the vaccines authorized for use in the US, those approved by the World Health Organization also qualify, such as the AstraZeneca/Oxford vaccine. Since there is a three to four week wait between the two dose vaccine options, this may present challenges to meet the December 8, 2021 deadline for employees who are unvaccinated.

### **Accommodations and Vaccine Documentation**

Accommodations are allowed for disabilities or sincerely held religious beliefs. The covered contractor is responsible for reviewing and considering what accommodation may be appropriate. Covered contractors are also tasked with verifying their employees’ vaccination status, using one of several documentation options which include: vaccination records from a health care provider or pharmacy, the Center for Disease Control (CDC) issued COVID-19 Vaccination Record Card, medical records, immunization records from a public health or state official, or any other record providing details of the vaccination and when it occurred. Contractors can allow employees to submit digital copies of the proof of vaccination. Antibody tests are not sufficient documentation according to Question #6.

### **Masks and Social Distancing**

In addition to a vaccine mandate for employees, the guidance also requires following CDC guidelines for masking and social distancing in locations controlled by covered contractors at which any employee working on or in connection with a covered contract

is likely to be present. This includes requiring masks indoors for all employees and visitors at premises located in communities with high or substantial community transmission and requiring masks indoors and in some outdoor areas for all individuals who are not vaccinated regardless of the level of transmission in the community.

Individuals who are not fully vaccinated are also required to maintain six feet of social distance from others. Fully vaccinated individuals are not required to maintain social distance. Much like the vaccine requirement, covered contractors are advised to consider requests for accommodations due to a disability or a sincerely held religious belief.

### **Designation of Staff for Ensuring Compliance**

The guidance also requires covered contractors to designate a staff person or team of people to be responsible for compliance with the guidance and implementing any safety protocols required under local, state or federal law. This includes communicating these requirements to staff and visitors.

These are just some high points. A credit union that may be a federal contractor for the purposes of this **guidance** would need to review it in full. Additionally, these credit unions may want to consult with counsel to discuss issues like when an existing contract may be subject to having the vaccine mandate added to such agreement.