

CLIENT ALERT

Vaccine Mandate Mandatory for Government Contractors: Additional Guidance; More Questions

October 6, 2021

President Biden's September 9, 2021 announcement of Executive Order 14042 ("EO") has been followed by several agency pronouncements attempting to provide needed clarity to the contractor community. The Safer Federal Workforce Task Force ("Task Force") issued detailed guidance on September 24. On September 30 and October 1, federal agencies began to issue the first Class Deviations, outlining the substantive terms that are likely to be required of covered contractors. DHS, NASA, DOJ, and the VA have issued Class Deviations and other agencies are expected to follow suit. We expect the FAR Council to issue the actual FAR clause on Friday, October 8.

One particular note about the Class Deviations issued to date is that the compliance requirements are seemingly linked to materials posted on the Safer Federal Workforce Task website, "as amended during the performance of this contract." This, of course, creates challenges for companies from a compliance standpoint and can complicate the ability to assess impact if the requirements continue to evolve.

These developments and other announcements, including new FAQs announced by the Task Force on October 4, raise numerous questions for contractors that are trying to implement compliance plans and policies. Major categories of unresolved questions include:

- Questions about the scope of covered contracts;
- Questions about which employees will be deemed covered by the EO, including identification of employees "working on" or "in connection with" contracts;
- Questions about which "worksites" will be deemed "covered contractor workplaces", particularly in mixed government and commercial work sites;
- Questions about the substantive obligations to be imposed by the EO, including open issues about the other safety protocols required by the EO;
- Effective dates of the various obligations; and
- Contract acceptance and performance issues.

The guidance issued to date also presents important questions about the scope of Presidential authority under the Procurement Act, and the articulated statutory basis for the EO, as well as questions about the President's constitutional authority to impose these requirements.

Crowell & Moring is continuing to monitor fast-moving developments in this area. Our team is available to help companies navigate the many issues raised by the EO.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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