



Executive Order 14042 Client Update

November 4, 2021

Dear Clients and Friends,

We have prepared an update of recent news regarding [Executive Order 14042](#) (EO 14042), which requires covered federal contractors and subcontractors to provide adequate COVID-19 safeguards to workers performing on or in connection with federal contracts or contract-like instruments.

BIG UPDATE ON THE OSHA ETS! As we were preparing to send this EO 14042 update to you, the OSHA Emergency Temporary Standard (ETS) on [COVID-19 Vaccination and Testing](#) was issued and will be published in the Federal Register on November 5. Ogletree will soon be fully unpacking the ETS and its implications for federal contractors subject to (or voluntarily complying with) EO 14042 very soon but please note that **federal contractor workplaces covered under EO 14042 are not subject to the OSHA ETS (FAQ 2.G.)** In addition, **full compliance with EO 14042 has been postponed from December 8, 2021 until January 4, 2022**, to align with the OSHA ETS and CMS compliance deadlines. Facts sheets from OSHA can be found [here](#) and [here](#).

Back to EO 14042 . . .

Many of you have already received requests from federal agencies to insert a bilateral modification into existing contracts related to EO 14042 requirements. The clause that will be inserted through this modification is FAR 52.223-99, which can be found in [September 30, 2021 communication](#) from the Civilian Agency Acquisition Council (CAAC). More than 30 federal agencies have issued instructions (called “class deviations”) on how they will insert the new requirements into their contracts. You can find a list of these agencies and the agency-specific modification details [here](#).

If you have already agreed to a contract modification request sent to you by a federal agency, you must comply with FAR 52.223-99, including any new FAQs issued by the [Safer Federal Workforce Task Force](#). The Task Force is updating the FAQs quite frequently and new FAQs involve questions and answers on the following subjects:

FAQ SECTION	NEW TOPICS
Vaccination and Safety Protocols	A contractor need not require additional proof of vaccination if it already has access to this information.
	Covered employee accommodation requests need not be resolved prior to the employee beginning work on a covered contract or in a covered workplace.
	If an accommodation has been granted to a covered employee, the contractor should notify its contracting officer if the accommodated employee works onsite at a federal workplace.
	If a covered employee’s accommodation request has been denied, the contractor should establish a timeline for the employee to become fully vaccinated.

The information provided in this email is intended as a general guide to EO 14042 compliance issues. Please contact an Ogletree attorney if you need additional information or clarification.

FAQ SECTION	NEW TOPICS
	<p>A medical accommodation can be granted even if the employee is not considered to have a “disability” if other medical considerations exist (such as the Centers for Disease Control (CDC) recommending a delay in vaccination based on an employee’s medical needs).</p> <p>Medical conditions for which the COVID-19 vaccination is contraindicated or should be delayed.</p> <p>Conditions – such as actual or anticipated pregnancy, receipt of another vaccine (like the flu shot), clinical trial participation, prior COVID-19 infection – that do not warrant delay of the vaccine.</p>
<p>Scope and Applicability of Task Force Guidance for Federal Contractors</p>	<p>An employee of a covered contractor corporate affiliate is a covered employee if the employee performs work at a covered contractor workplace.</p> <p>A workplace controlled by a corporate affiliate of a covered contractor is a “covered contractor workplace” if a covered employee of a covered contractor is likely to be present at the affiliate’s workplace during the period of performance under the contract.</p>
<p>Compliance</p>	<p>If a covered contractor employee refuses to be vaccinated, what steps can a covered contractor take before terminating the employee.</p> <p>Covered contractors who have difficulty complying with EO 14042 requirements should contact their contracting officer to address any challenges.</p> <p>Prime contractors who flow down EO 14042 to covered subcontractors can assume subcontractor compliance, unless credible evidence exists of noncompliance (no certification or acknowledgement of the flow down is required from subcontractors).</p>

Other Resources:

- Safer Federal Workplace [information for federal contractors](#), including [FAQs](#)
- CDC [COVID-19 Vaccine Information for Specific Groups of People](#);
- CDC [Interim Clinical Considerations for Use of COVID-19 Vaccines](#)
- EEOC [Guidance](#) on COVID-19 and the ADA
- EEOC Updated [Guidance](#) on [Religious Objections to Vaccine Mandates](#)
- [Iowa](#) Medical and Religious Exemptions from Vaccine Policies
- [Missouri](#) Executive Order 21-10
- [Arkansas](#) Law Addressing Mandated COVID-19 Vaccines
- [Texas](#) Executive Order Addressing Vaccine Mandates
- [State Challenges](#) to EO 14042

We hope this information is useful but if it is not, please let us know and we will remove you from our mailing list.

Please let us know if we can assist you in any way.

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