

Miller & Chevalier

Federal Contracting COVID Mandates

American Staffing Associate (ASA)

October 29, 2021

Scope

- EO14042 (COVID Safety Protocols for Federal Contractors)
 - Requires compliance with Guidance issued by Safer Workforce Task Force.
 - Includes vaccine, masking, distancing and workplace oversight requirements.
- Guidance applies via contract clauses included in **covered contracts and contract-like instruments**
 - Includes vast majority of services contracts.
 - Some agencies also requiring for products contracts (GSA, NASA).
 - “Strongly encouraged” for non-covered contracts.
- Mandatory flowdown to subcontracts for services >\$250K
 - “Strongly encouraged” for non-covered subcontracts.

People & Places

- **Covered Employees**

- Work “on or in connection with” a federal contract or work at a “covered contractor workplace.”
- Includes:
 - Work on the contract itself or provide necessary support.
 - Work full-time, part-time, or remotely.

- **Covered Contractor Workplaces**

- Are controlled by a contractor working on a covered contract.
- Are buildings or facilities where a covered employee is likely to be present during the performance of a covered contract.
- Are not employee homes (for purposes of masking and social distancing).

Requirements

- Covered employees must be “fully vaccinated.”
 - December 8, 2021, or first day of period of performance on an option, renewal, extension, or new contract after Nov. 14, 2021
 - Includes all employees working at covered contractor workplace, including those not working on or in connection with covered contract.
- Covered contractor workplaces must also implement masking and social distancing requirements.
 - Vaccinated v. Unvaccinated employees
 - High or substantial v. low or moderate community transmission
- Covered contractors must designate a COVID-19 safety coordinator.

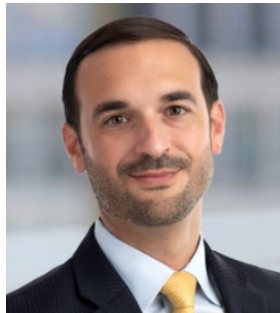
Common Scenarios for Staffing Agencies

- Scenario #1.
 - Staffing agency is covered contractor (e.g., via subcontract with covered client).
 - Work performed directly or indirectly at workplace controlled by staffing agency.
 - All staffing employees at workplace are covered employees, regardless if they work on covered subcontract or not.
- Scenario #2.
 - Staffing agency is covered contractor (e.g., via subcontract with client #1).
 - Staffing employees are likely covered employees if they work at a covered workplace controlled by client #2.

Common Scenarios for Staffing Agencies

- Scenario #3.
 - Staffing agency not covered contractor.
 - Staffing employees are not covered employees but covered clients may insist on vaccination if staffing employees will work at client's covered workplace.
- Scenario #4.
 - Staffing agency is not covered contractor.
 - Staffing employees not covered employees but will work remotely performing indirect support functions for covered contractor.
 - Staffing employee arguably should not be required to vaccinate.
- Scenario #5.
 - Staffing agency is not a covered contractor.
 - Staffing employees not covered employees and will work at a non-covered workplace.
 - Staffing employee not required to vaccinate.

Q&A SESSION



Alex Sarria, Member
202.626.5822
asarria@milchev.com



Jason Workmaster, Member
202.626.5893
jworkmaster@milchev.com