

**SEPTEMBER 13, 2021**

For more information,
contact:

Steve Cave
+1 703 245 1017
scave@kslaw.com

Rick Vacura
+1 703 245 1018
rvacura@kslaw.com

Amanda Sonneborn
+1 312 764 6940
asonneborn@kslaw.com

Mark Villapando
+1 703 245 1023
mwillapando@kslaw.com

Lauren Horneffer
+1 703 245 1020
lhorneffer@kslaw.com

King & Spalding

Northern Virginia
1650 Tysons Blvd
Suite 400
McLean, VA 22102
Tel: +1 703 245 1000

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Washington, D.C. 20006-
4707
Tel: +1 202 737 0500

Executive Orders Requiring New Safety Protocols Against COVID-19 for Federal Contractors and COVID-19 Vaccination Requirements for Federal Employees

Executive Order requires agencies to implement requirement for COVID-19 vaccination for all Federal Employees and Safety Protocols for Federal Contractors

On September 9, 2021, President Biden issued two Executive Orders relating to COVID-19 safety protocols. The first Executive Order applies to Federal contractors. It does not specifically require that employees of Federal contractors must receive the COVID-19 vaccine to contract with the Federal government, but it does require certain safety protocols. The second Executive Order requires all federal employees be vaccinated.

The Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors requires that federal contracts and contract-like instruments described in the Order include a new clause containing safety protocols. These obligations also flow down to lower-tier federal subcontracts. These protocols incorporate guidance from the Safer Federal Workforce Task Force (“Task Force”) on COVID-19 safeguards, which seeks to “ensur[e] that Federal contractors and subcontractors are adequately protected from COVID-19” to “bolster economy and efficiency in Federal procurement.” By September 24, 2021, the Task Force must issue additional guidance for this new clause, including definitions of relevant terms for both contractors and subcontractors, explanations of protocols to ensure compliance with workplace safety guidance, and a discussion of any exceptions to its guidance.



By October 8, 2021, the Federal Acquisition Regulatory Council must amend the Federal Acquisition Regulation (“FAR”) to require inclusion into solicitations and contracts of the new safety protocols clause and to take initial steps to implement policy to acquisition offices for use of the clause. Also, on October 8, 2021, Federal agencies must take steps to include the new clause into contracts and contract-like instruments that are *not* subject to the FAR.

The Order applies to all new contracts and contract-like instruments issued on or after October 15, 2021, as well as extensions, renewals, and options exercised in existing contracts and contract-like instruments whether or not they are subject to the FAR. If agencies issue a solicitation before October 15, 2021, and enter into a new contract or contract-like instrument within 30 days of that effective date, agencies are strongly encouraged to apply the new safety protocols, but extensions, renewals, or options exercised for those contracts and contract-like instruments must include the safety protocols clause. Further, for existing contracts and contract-like instruments and solicitations issued between the date of the Executive Order and October 15, 2021, agencies are strongly encouraged to ensure that the safety protocols in those contracts are consistent with the requirements of the new clause.

For the second Executive Order issued pursuant to sections 3301, 3302, and 7301 of title 5 of the U.S. Code (authorizing the President to form rules for individuals in civil service, competitive service, and the conduct of executive branch employees, respectively), all Federal agencies must implement a program requiring COVID-19 vaccination for all Federal employees, with exceptions only as required by law. The President has required the Task Force to issue guidance for all Federal agencies (*i.e.* Executive Agencies as defined in 5 U.S.C. § 105, excluding the Government Accountability Office) on agency implementation of this requirement, within seven days of the date of the Executive Order. Although the Executive Order applies the definition of the term “employee” as found in 5 U.S.C. § 2105 (including an employee paid from non-appropriated funds), it does not identify the legal exceptions that may apply whereby a Federal employee may not be required to get the COVID-19 vaccine. We anticipate that these at the least will mirror the vaccine exceptions in the private sector, such as those to accommodate a disability and/or a sincerely held religious belief.

King & Spalding will be monitoring for its clients the guidance from the Task Force as well as Federal Agencies and the FAR Council’s implementation of that guidance into the new safety protocols clause.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
ATLANTA	CHICAGO	GENEVA	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
AUSTIN	DENVER	HOUSTON	NORTHERN VIRGINIA	SILICON VALLEY	
BRUSSELS	DUBAI	LONDON	PARIS	SINGAPORE	