

ALERT

End of the Federal Contractor COVID-19 Vaccination Mandate

May 11, 2023

WHAT: The Biden Administration announced the rescission of its COVID-19 vaccination requirements for government contractors along with federal employees and certain healthcare workers. The President followed this announcement by issuing a new executive order, Moving Beyond COVID-19 Vaccination Requirements for Federal Workers. The EO revokes EO 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, and directs that all agency policies implementing EO 14042 be rescinded. These announcements mark the official end of the vaccine mandates and, more broadly, one of the more unusual methods of applying compliance obligations to federal contractors in recent memory.

WHEN: The rescission is effective May 12, 2023, coinciding with the expiration of the COVID-19 public health emergency. As part of the rescission efforts, the EO was signed on May 9, 2023.

WHAT DOES IT MEAN FOR INDUSTRY: The practical effects are likely limited. Enforcement of the contractor vaccination mandate has effectively been on hold for the last 18 months. The Safer Federal Workforce Task Force issued preliminary instructions and plans to issue further guidance, presumably rescinding the additional safety protocols created by EO 14042 and other prior COVID-19-related EOs. And any remaining litigation and appeals over the requirements will probably draw to a close as mooted.

Many contractors may have concerns about what the rescission means for requests for equitable adjustments or other reimbursements for costs incurred in prior years to comply with EO 14042. The new EO was silent on this question, which means it may be answered at the boards of contract appeals or in court to the

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extent that contractors pursue claims and appeals.

While the federal requirements are being rescinded, contractors should still be aware of any state and local requirements such as the mandates issued in California and Washington, as these will still apply to work in those localities.

Finally, as we noted in a previous article, a long-term question about the vaccination requirements might be what impact it will have on the future of federal contracting. In challenges to EO 14042's requirements, the Fifth, Sixth, Ninth, and Eleventh Circuits issued decisions setting out new markers for interpreting the scope of the President's authority to issue procurement-related executive orders. Contractors may also wonder if the Government's implementation of EO 14042, in particular the incredibly brief refer-to-a-website contract clause, might be proposed for new clauses with any frequency moving forward.

Jonathan Clark, a Law Clerk at Wiley Rein LLP, contributed to this alert.