

11.23.2021

NECA General Guidance on Federal Contractor Vaccine Mandates

The following guidance is for NECA Field personnel and local Chapter use. It should only be shared with NECA members with the caveat that they need to tailor it to their local and state needs, and it should not be published publicly.

NECA members who are federal contractors or subcontractors with federal government agencies are covered by Presidential Executive Order 14042 which imposes a Federal Contractor Mandate requiring COVID-19 vaccination of employees who work "on or in connection with" a federal contract. There are also new requirements for all locations where work "on or in connection with" a federal contract is performed.

The Federal Contractor Mandate is entirely separate from the OSHA Emergency Technical Standard that applies to companies with 100+ employees, which was recently stayed by a federal court.

Many prime contractors have already accepted a modification of their existing federal agency contracts that includes COVID-19 employee vaccination and other requirements under [November 10th Guidance](#) and the [Safer Federal Workforce Task Force FAQs for contractors/subcontractors](#). Additional instructions have been published by each of the federal agencies.¹

The Federal Contractor Mandate:

- applies to federal contractors and their subcontractors
- applies to small businesses
- requires workers to be "fully vaccinated" by **January 18, 2022 (this is a new deadline)**, or possibly a later date if your contract has not been modified yet
- does not have a "test out" option
- requires employers to have a designated coordinator, written policies, procedures, and building signage
- allows employers to grant accommodations for employees who decline to be vaccinated only for sincerely held religious beliefs and certain medical conditions.

¹ NECA issued a recent alert on the GSA FAQs that suggests that some utilities will not be required to put the modification in their contracts; however, it remains unclear how that will play out in practice.

New guidance from the Safer Federal Workforce Task Force provides more clarity for contractors/subcontractors that work on-site at federal buildings and locations controlled by a federal agency.

Before January 18:

Attached is an example of the [Certification of Vaccination form](#) that employees of contractors/subcontractors need to access a federal building or federally controlled worksite. Unvaccinated contractors must produce a negative test result from no later than the previous 3 days, unless they are participating in an agency-sponsored COVID-19 testing program. Federal agency employees who supervise the work of the contractor/subcontractor may ask to see this form and the recent test result. Some but not all agencies are collecting these forms into a database so that the individual workers do not need to produce this form every time they enter the premises.

After January 18th:

Contractors/subcontractors that have accepted a modification of an existing contract or entered into an extension or a new contract are "expected to comply with all requirements set forth in their contract. Where covered contractors are working in good faith and encounter challenges with compliance with COVID-19 workplace safety protocols, the agency contracting officer should work with them to address these challenges. If a covered contractor is not taking steps to comply, significant actions, such as termination of the contract, should be taken." [underlining added].

Contractor employees with a valid Personal Identification Verification (PIV) card for access to a particular facility will not be asked for proof of vaccination for entry. Contractor employees without a valid PIV card will be considered visitors. Each agency will have their own protocols for visitors.

If a NECA member company decides not to implement the vaccination requirement but will be continuing to work under a current contract, their employees must follow all COVID-19 safety protocols required by the federal agency that manages their contract. Agencies have discretion to impose additional safety protocols for unvaccinated workers, and there is a possibility that unvaccinated workers will be denied access to certain locations after January 18th.

NECA member companies that plan to accept the contract modification or bid on new contracts but anticipate that some of their employees will not be fully vaccinated before January 18th are strongly encouraged to discuss these "challenges" with the prime contractor/agency contracting officer.

While 27 states, several unions, companies, and individuals have filed lawsuits around the country to challenge the Federal Contractor Mandate, some Governors have issued their own

executive orders, and a few state legislatures have passed new laws that conflict with the federal requirements, **no court** has issued a stay of EO 14042.

Whether NECA members have already accepted a modification of an existing federal contract, are waiting to receive notification from a customer of a "flow down" requirement, or are contemplating a bid on new federal work, NECA members are strongly encouraged to take steps now towards compliance.

Attached hereto are several pieces of guidance that may be used to assist NECA members with their obligations under the Federal Contractor Mandate. As always, please communicate that members should be working with their local Chapters, consulting with local legal counsel and considering the impact of local and state laws in their compliance efforts. NECA general guidance is not and should not be considered to be legal advice. Attached to this memorandum, please find:

- Attachment A: Sample Letter to Members
- Attachment B: A general COVID-19 policy for federal contractors and subcontractors prepared by our outside legal advisors at <http://www.connmaciel.com/>. This template should be tailored with the assistance of Conn Maciel or a member's legal advisor for their state and individual circumstances.
- Attachment C: ADA Accommodations Guidance
- Attachment D: Bargaining Tips

As with most of the COVID-19 legislation and regulation, additional guidance is likely forthcoming. NECA will update these resources, as necessary. Please seek competent legal or human resources advice for assistance with any specific factual scenarios.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

ATTACHMENT A

SAMPLE LETTER TO MEMBERS

Dear [NECA Member]:

If your company is a federal contractor or subcontractor, please read this carefully.

NECA members who are federal contractors or subcontractors with federal government agencies are covered by Presidential Executive Order 14042 which imposes a Federal Contractor Mandate requiring COVID-19 vaccination of employees who work "on or in connection with" a federal contract. There are also new requirements for all locations where work "on or in connection with" a federal contract is performed.

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Whether your company has already accepted a modification of an existing federal contract, or you are waiting to receive notification from a customer of a "flow down" requirement, NECA members are strongly encouraged to take steps now towards compliance.

The list below provides the suggested steps and best practices that you should undertake now to prepare to undertake or continue federal contract work. Please be prepared to work with your chapter and consult local legal assistance, as there may be state and local issues to consider.

FEDERAL CONTRACTOR /SUBCONTRACTOR TO DO LIST

1. Designate the COVID-19 workplace safety protocol coordinator responsible for implementation and compliance with the Federal Contractor Mandate at your company.

2. Post signage at the entrances to buildings that your company controls indicating COVID-19 safety protocols for vaccinated and unvaccinated persons on the premises.
3. Develop a written policy on COVID-19 vaccinations.
4. Develop written policies and procedures to handle exemption and accommodation requests; train your HR manager to conduct individualized assessments of those requests.
5. If your employees work at any federal building or property, or at a customer site that has a vaccination requirement, make sure they carry proof of their vaccination status, or the form required by that agency/customer.
6. Talk to your employees about the impact of this Federal Contractor Mandate on your business, the new deadline for getting vaccinated, and your policies and procedures. Seek local NECA Chapter and legal advice before making any decisions about discipline or termination of an employee who refuses to be vaccinated.
7. Educate your procurement professionals and subcontractors about “flow-down” requirements and compliance with the Safer Federal Workforce Task Force Guidance.
8. You may incur unanticipated expenses in complying with the Federal Contractor Mandate. Right now, it is unclear whether any of those costs will be reimbursable, but it is recommended that you maintain all related documentation for a future Request for Equitable Adjustment or a claim.
9. Notify your customer as soon as you anticipate any problems complying with these requirements to inquire whether there could be any flexibility based upon special circumstances.
10. Develop a plan with your local NECA Chapter on how to handle requests for bargaining over the federal contractor mandate.

ATTACHMENT B

**GENERAL COVID-19 POLICY FOR FEDERAL CONTRACTORS AND
SUBCONTRACTORS**

[See attached pdf]

ATTACHMENT C

**FEDERAL VACCINE MANDATE ADA ACCOMMODATIONS GUIDANCE FOR
FEDERAL CONTRACTORS AND SUBCONTRACTORS**

I. Internal Checklist

Date this Request Form Received in Human Resources:

Interactive Discussion By Date:

Does employee potentially qualify for a disability or religious exemption from the vaccination policy?

Yes _____ No _____

Where the employee potentially qualifies for an exemption, does the exemption pose a direct threat to the health and safety of the employee or others in the workplace?

Yes _____ No _____

In addition to COVID-19 testing and face covering requirements set forth under OSHA’s Vaccination and Testing Emergency Temporary Standard (“ETS”), 29 C.F.R. Section 1910.501, identify any reasonable accommodations and safeguards that can eliminate or reduce the direct threat, if applicable:

Has the employee been informed in writing?

Yes _____ No _____

Name of Representative: _____

Signature of Representative: _____ Date: _____

II. Form for Employee Request for Religious Accommodation for Vaccination

[COMPANY] is a federal contractor and therefore all employees who work on or in support a government contract must be fully vaccinated for COVID-19 pursuant to Executive Order 14042.

[COMPANY] is committed to providing equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation. [COMPANY] is committed to complying with all laws protecting the sincerely held religious beliefs, practices, and observances of its employees.

Employers may consider many factors in assessing whether an employee's request for an exception from the COVID-19 vaccination requirement is based on a sincerely held religious belief, practice or observance, including whether the employee has acted in a manner inconsistent with their professed belief.

When requested by any employee who has sincerely held religious beliefs, practices or observances that prohibit them from receiving a COVID-19 vaccine, [COMPANY] will engage in an interactive process with that individual to determine whether the employer can provide an accommodation.

The purpose of this form is to start the process. The information you provide will help [COMPANY] determine whether you may be eligible for a religious exception to the COVID-19 vaccination requirement. You are encouraged to provide as much information as possible. You may be asked for additional information as needed by [COMPANY] to determine if you are legally entitled to accommodation.

Be advised that objections to COVID-19 vaccinations that are based on non-religious reasons (including social, political, philosophical, or economic views, personal preferences, concerns about side-effects) do not qualify for an exception.

If you want to request an exception based upon a disability or a medical condition, do not use this form.

You will be notified of [COMPANY]'s decision on your request by [email/US mail].

If an exception is granted, the employer will select the accommodation. You must accept the restrictions in the accommodation and observe [COMPANY]'s health and safety protocols including but not limited to weekly COVID-19 testing, wearing a face mask fully covering the nose and mouth, and practicing social distancing when present in the workplace. Failure to comply with the accommodation restrictions and all health and safety protocols will result in disciplinary action up to and including termination of employment.

Accommodations must be reasonable, cannot create an undue hardship for the employer, and would not pose a direct threat to the health and/or safety in the workplace for the requesting employee or others. There may be circumstances where an employee has substantiated a valid request for a religious exemption from the COVID-19 vaccination requirement, but no accommodation meets these criteria.

If your request is denied, you must receive the first dose of a COVID-19 vaccine within two (2) weeks of the final determination by [COMPANY]. If you are receiving a two-dose vaccination series, the second dose must be administered within six (6) weeks of receiving the first dose. Failure to meet these deadlines to become fully vaccinated may result in termination of employment.

INSTRUCTIONS: Please answer these questions *in your own words*. You may attach additional pages if you need more space. You may (but you are not required to) attach a letter from your spiritual leader if you have one.

1. Describe your objection to the COVID-19 vaccination requirement.
2. How would complying with the COVID-19 vaccination requirement substantially burden your religious exercise or conflict with your sincerely held religious beliefs, practices or observances?
3. How long have you held the religious belief underlying your objection?
4. Is your religious objection to the use of all vaccines, only COVID-19 vaccines, or a specific type or brand of COVID-19 vaccine? And why?
5. Have you ever received vaccines as an adult against any of these diseases: influenza/common flu, shingles, pneumonia, rabies, HPV, tetanus, diphtheria, whooping cough? If yes, when?
6. Have you ever received vaccines as an adult against any other diseases before traveling outside the US (for example: anthrax, cholera, encephalitis, hepatitis A, hepatitis B, meningitis, rabies, polio, typhoid, yellow fever)? If yes, when?
7. Have you separately requested an exemption from the COVID-19 vaccination requirement because of a disability, medical condition, or any other reason?

Please provide any additional information that you think may be helpful in the evaluation of your request.

VERIFICATION AND ACCURACY

I verify that the information I am submitting to support my request for an exemption from [COMPANY]’s COVID-19 vaccination policy is true and accurate to the best of my knowledge.

I understand that any false information or intentional misrepresentation may result in disciplinary action, up to and including termination of my employment.

I further understand that [COMPANY] is not required to provide an accommodation if doing so would pose a direct threat to myself or others in the workplace or would create an undue hardship for [COMPANY].

There are ___ pages attached to this form.

I declare to the best of my knowledge and ability that the foregoing is true and correct.

Signature: _____

Print Full Name: _____

Date: _____

Employee ID Number: _____

Email: _____

Mailing Address: _____

Phone Number: _____

[Add instructions on how to submit the request – by email or hardcopy to HR etc.]

