

**Wednesday,
September 15
4 to 5 PM EDT**



What We Know About New Vaccine Mandates

H. Juanita Beecher · David S. Fortney

nbeecher@fortneyscott.com · dfortney@fortneyscott.com

SCOPE AND USAGE OF THE INFORMATION

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THE INSTITUTE FOR WORKPLACE EQUALITY

Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEOC and OFCCP developments and strategies for effective compliance.

For more information on The Institute, visit:
www.theinstitute4workplaceequality.org

INSTITUTE MEMBERSHIP OFFERS MANY BENEFITS

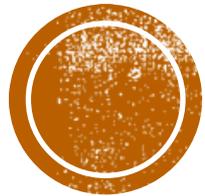
- Our leadership team has unique insights, access, and regularly interacts with OFCCP and EEOC national and regional leadership. As of August 10, 2020, we have signed an MOU with the OFCCP.
- We are collaborative and keep employers current and connected to what is happening in Washington, D.C.
- We have a well-established faculty made up of Nationally renowned experts from many firms
 - Our distinguished leaders are comprised of leading EEO attorneys, practitioners, and statisticians from top law firms and consulting practices on EEO/AA
 - Our faculty and partners have a breadth of knowledge and expertise across all industries, including: Defense/Aerospace, Financial services, Food Services, Healthcare, Higher education, Hospitality , Pharmaceutical, Tech *and more*
- Advisory Board members are senior leaders in their organizations, and have broad experience and expertise in the areas of EEO, diversity and inclusion, OFCCP compliance, compensation, and related matters

INSTITUTE MEMBERSHIP OFFERS MANY BENEFITS – CONT.

- We write white papers addressing our members compliance concerns and priorities
- Provide opportunities for our members to collaborate and attend brainstorming sessions with OFCCP
- Semi-annual meetings with Institute Advisory Board with OFCCP Director and National leadership
- Monthly member's only roundtables on cutting edge issues
 - Examples:
 - Changing OFCCP enforcement priorities
 - EEO legal developments
 - EEO-1 pay data reporting challenges
 - Quickly growing patchwork of pay equity laws in the U.S. and abroad
- Practical key takeaways summarized after each call so that members can share updates easily within their organizations

AGENDA

- President Biden's Vaccine Mandates
- Employer Mandates
- New OSHA ETS
- Federal Contractor Obligations
- New Guidance from Safer Federal Workforce Task Force
- What Employers Should Do Now



PATH OUT OF THE PANDEMIC: PRESIDENT BIDEN'S COVID-19 ACTION PLAN



PATH OUT OF THE PANDEMIC

- Six-pronged comprehensive national strategy
 - Vaccinating the unvaccinated
 - Further protecting the vaccinated
 - Keeping schools safely open
 - Increasing testing & requiring masking
 - Protecting our economic recovery
 - Improving care for those with COVID-19



**PATH OUT OF
THE PANDEMIC:
PRESIDENT BIDEN'S
COVID-19
ACTION PLAN**

SEPTEMBER 2021



EMPLOYER MANDATES

KEY COMPONENT

- OSHA Emergency Temporary Standard for employers with 100 or more employees to require vaccinations or weekly testing
- Two Executive Orders
 - [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)
 - [Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees](#) requires all employees to be vaccinated “with exceptions only as required by law”
- Centers for Medicare and Medicaid Services to require vaccine mandates for workers in health care settings that receive Medicare or Medicaid reimbursement



OSHA EMERGENCY TEMPORARY STANDARD

- OSHA will issue an Emergency Temporary Standard (ETS) to require employers with 100 or more employees to ensure that workers either are
 - Vaccinated, or
 - Provide a negative test at least weekly before coming to work
- Employers also to provide paid time off to get vaccinated or to recover from vaccine side effects
- Monetary penalties up to \$14,000 per violation
- State OSHA plans must implement the ETS or adopt standards that are at least effective



FEDERAL CONTRACTOR EO

- The new EO requires federal contractors to provide “...adequate COVID-19 safeguards to their *workers* performing **on or in connection with** a federal government contract...” (Emphasis added)
 - EO likely preempts safety and health state laws that are less protective of employees
- Includes most procurement contracts for services, construction or leasehold interests in real property; for services covered by SCA; contracts for concessions; and contracts offering services in connection to federal property or lands
 - The EO includes exceptions, and does not apply to grants and subcontracts solely for products
- Guidance will be provided by September 24 (more details in later slide)



NEW FEDERAL CONTRACT PROVISIONS

- The new contract clause addressing the safety protocols must be included in new, extended, or renewed contracts (or contract-like instruments) as of October 15
 - The new clause will require contractors and subcontractors “to comply with all guidance for contractor and subcontractor workplace locations published by the Safer Federal Workforce Task Force”
- Additionally, the contracting agencies are “strongly encouraged” to include the safety protocols in pending solicitations and existing contracts effective immediately
 - The EO addresses its applicability to new contracts, pending solicitations, and existing contracts in Section 6



NEW GUIDANCE FROM SAFER WORKFORCE TASK FORCE

- [Safer Workforce Task Force](#) established by EO Protecting the Federal Workforce on January 20, 2021
 - On September 13 Task Force issued updated guidance for federal workers stating all must be vaccinated by November 22 unless reasonably accommodated
- Federal Contractor EO directs Task Force to provide additional Guidance to federal contractors by September 24th, and, following approval, *the Guidance will become the new contractor requirements*
 - Guidance likely will include
 - **Vaccine mandate** for federal contractor *workers*
 - **Exemptions** based on religion and disability
 - Guidance subject to OMB approval

**SAFER
FEDERAL
WORKFORCE**

WHAT SHOULD EMPLOYERS DO NOW

- Develop workforce communication strategies
- Begin to develop vaccination and testing protocols
 - Assess the matrix of federal, state, and local requirements
 - Review verification process and recordkeeping for vaccines and testing
 - Assess whether time required for testing is compensable
 - Testing processes and payment
- Review reasonable accommodation processes
- Determine whether collective bargaining is required

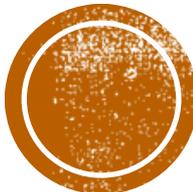


KEY DATES

Key dates that we are monitoring:

- **September 24** – Task Force Guidance issued, and the Guidance will determine the specific federal contractor obligations
- **October 8** – FAR Council to issue policy directions to acquisition offices for new contracting procedures
- **October 15** – Effective date for new contracts
- **October ?** – Date unknown; best guess for OSHA to publish the ETS

WRAP UP & THANK YOU



RESOURCES FOR EMPLOYERS

- Path Out of the Pandemic—President Biden’s COVID-19 Action Plan: <https://www.whitehouse.gov/covidplan/>
- Remarks by President Biden on Fighting the COVID-19 Pandemic: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>
- Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>

RESOURCES FOR EMPLOYERS

- Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees:
<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>
- Safer Federal Workforce Task Force:
<https://www.saferfederalworkforce.gov/overview/>
- EEOC Guidance on Vaccine Mandates:
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- OSHA: <https://www.osha.gov/coronavirus>

RESOURCES FOR EMPLOYERS

- The 22 states that follow a state OSHA plan:
<https://www.osha.gov/stateplans>
- COVID-19 Guidance under Fair Labor Standards Act on pay for COVID-19 testing Questions 7 & 8:
<https://www.dol.gov/agencies/whd/flsa/pandemic#7>

NITA BEECHER

H. Juanita (Nita) M. Beecher is a nationally-recognized expert on OFCCP and the EEOC with more than 40 years of experience in federal and state employment law. Currently, Ms. Beecher provides advice to clients on a broad range of employment law issues with her primary focus on issues involving discrimination, affirmative action, compensation and wage and hour matters. She also serves as Legal Counsel to The Institute as well as co-editor of the Federal Employment Law Insider, a monthly newsletter updating employers on federal laws and regulations and presents webinars on federal employment law issues.

Ms. Beecher served as an in-house counsel with several major corporations including McDonnell Douglas and Boeing for more than 20 years where she advised in-house clients on labor and employment law issues including, among other matters, OFCCP audits, EEOC class age investigations, implementation of the ADA, FLSA Wage and Hour audits, and developed a self-audit tool for major corporations. After leaving corporate life, Ms. Beecher led networks of senior diversity, equal employment opportunity and affirmative action corporate practitioners and senior in-house labor and employment lawyers focused on labor and employment law issues. Ms. Beecher has been a regular speaker at many professional meetings, including the leading organization for federal contractors, the Industry Liaison Group (“ILG”) National Conference since 2004.

DAVID FORTNEY

David Fortney is a co-founder of Fortney & Scott, LLC, a Washington, D.C.-based law firm counseling and advising clients on the full spectrum of work-place related matters, including employment discrimination and labor matters, compliance programs, government contracting, and developing strategies for avoiding or responding to workplace-related crises. Mr. Fortney's broad-based practice includes equal employment opportunity requirements, wage and hour matters, federal contractor's affirmative action and non-discrimination obligations, collective bargaining, and workplace health and safety. He brings experience from the public and private sectors, and he represents clients before federal and state agencies, including the U.S. Department of Labor's agencies, the Equal Employment Opportunity Commission, and the National Labor Relations Board.

Previously, Mr. Fortney served as the chief legal officer and other positions at the U.S. Department of Labor in Washington, D.C. during the term of President George H.W. Bush.

Mr. Fortney is on the Board of Directors of the American Employment Law Council, a co-founder of the Institute for Workplace Equality, and a Member of the ABA Council for the Labor & Employment Section. Mr. Fortney has been recognized as one of the leading employment lawyers in Washington, D.C. by the CHAMBERS USA survey of America's Leading Lawyers for Business in all years from 2005 through present. He was selected for inclusion in the 2008 through present editions of The Best Lawyers in America, Washington D.C.'s, Washington D.C.'s Best Lawyers, and Super Lawyers. Mr. Fortney received an AV rating (the highest level) by Martindale-Hubbell.