

MEMORANDUM

TO: University Presidents/Chancellor
FROM: Blake Flanders, President
DATE: October 21, 2021
RE: Federal COVID-19 Vaccine Mandate for Contractors and Subcontractors

I. Background – Federal Mandate

On September 9, 2021, President Biden issued Executive Order 14042 (“EO”) (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>), which directs federal executive agencies to include a clause that mandates specific COVID-19 safety protocols in certain federal contracts (“covered contract”). Per the EO, the contract clause will require federal contractors and subcontractors to comply with all guidance published by the Safer Federal Workforce Task Force for the duration of the contract, including guidance issued on September 24, 2021 (“September 24 Guidance”) (https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf). Pursuant to the September 24 Guidance, federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. Require all covered employees to be fully vaccinated for COVID-19, except in limited circumstances where an employee is legally entitled to an accommodation. The definition of covered employee is very broad and includes not only employees performing under the federal contract, but also those who work in connection with a covered contract (such as HR, legal, finance, IT, etc.) and those who might be present even just once at a covered contract workplace.

For existing contracts, covered contractor employees must be fully vaccinated no later than December 8, 2021. For contracts after that date, all covered contractor employees must be fully vaccinated: a) by the first day of the period of performance on a newly awarded covered contract; or b) by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract;

2. Require individuals, including covered contractor employees and visitors, to mask and physically distance while in covered contractor workplaces in accordance with CDC guidelines; and

3. Designate a person or persons to coordinate COVID-19 “workplace safety efforts” at covered contractor workplaces.

Most state universities maintain federal contracts or subcontracts that will likely be or have already been impacted by the EO and September 24 Guidance. The purpose of this Memorandum is to provide further guidance to the six state universities in implementing this federally mandated COVID-19 vaccine program.

II. Contract Implementation

According to the September 24 Guidance, federal executive agencies must phase in the applicable contract clause as follows:

1. Covered contracts awarded prior to October 15 where performance is ongoing: EO and Guidance requirements will be incorporated at the point at which a contract option is exercised, or an extension is made.

2. New contracts: EO and Guidance requirements will be incorporated into contracts awarded on or after November 14. Between October 15 and November 14, federal agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time.

It is important to note that the contract implementation requirements are only a “floor” and that the September 24 Guidance allows for (and encourages) federal agencies to modify current contracts through amendments prior to renewals or extensions. The September 24 Guidance also encourages federal agencies to include the new clause/requirements in contracts and contract-like documents that are not covered by the Executive Order. Regardless whether the Executive Order applies, federal contractors and subcontractors (including the state universities) will be faced with having to accept the clause and follow its requirements in order to maintain federal projects and the funding that accompanies them.

The six state universities in Kansas have hundreds of contracts with Federal agencies, such as NASA, the Department of Justice, the Department of Defense, the Armed Forces, the Department of Health and Human Services, Department of Energy, the National Science Foundation, and the Department of Education, as well as subcontracts with large private companies that act as federal contractors. These contracts and subcontracts provide hundreds of millions of dollars to the institutions and to the State of Kansas. Failure to adhere to the EO and September 24 Guidance would jeopardize this critical funding and the research component of the institution’s mission.

In summary, those institutions that determine a need to maintain covered contracts or subcontracts (in order to continue this critical funding source and the important research conducted pursuant to these contracts), will as a practical matter have no choice but to adhere to this federal mandate, as delineated in the EO and September 24 Guidance requirements. This circumstance is particularly troubling and difficult for the state universities in light of 2021 Senate Bill No. 159, Section 59, which prohibits state agencies from using moneys appropriated by the state to “require an individual to use a COVID-19 vaccination passport within this state for any purpose.” Every effort

should be made to use non-state funds and federal overhead to finance the federally mandated vaccination requirements.

III. Institutional Process

Each institution that determines it is subject to these requirements should consider implementing processes to comply with the EO and September 24 Guidance requirements, including:

1. Requiring and documenting COVID-19 vaccines for covered contractor employees;
2. Evaluating requests for accommodations for COVID-19 vaccines.
3. Designation of a person or person to coordinate COVID-19 workplace safety efforts as outlined in the EO and September 24 Guidance;
4. Designation of “covered contractor workplaces” in accordance with September 24 Guidance; and
5. Masking and physical distancing while in covered contractor workplaces, including by visitors and students, in accordance with CDC guidelines.

IV. Additional Information

The state universities should refer to the EO and September 24 Guidance (links above), including the FAQs including therein for further guidance regarding applicability and compliance with the federal mandate. Additional information can be located at:

<https://www.saferfederalworkforce.gov/>

<https://www.saferfederalworkforce.gov/contractors/>

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>