

**FREQUENTLY ASKED QUESTIONS REGARDING FEDERAL AND STATE LAWS REGARDING COVID-19  
VACCINATIONS**

*There is currently no federal law, regulation, or policy that would generally apply to require Alabama county employees to be vaccinated against COVID-19 and/or to undergo weekly testing; however, please be aware that this requirement may be imposed by contract. As with everything else involving COVID-19, this situation is rapidly developing as new guidance is released. Further, multiple lawsuits challenging almost every facet of the various federal mandates have been or are being filed.*

**(1) What are the federal vaccine requirements?**

There are actually three different federal regulations that may require certain non-federal employees to get vaccinated:

A. The Centers for Medicare and Medicaid (“CMS”) Omnibus COVID-19 Health Care Staff Vaccination Interim Federal Rule, effective November 5, 2021.

B. The Occupational Safety and Health Administration (“OSHA”) Emergency Temporary Standard, effective November 5, 2021.

C. The Executive Order on Ensuring Adequate Covid Safety Protocols for Federal Contractors, aka the Federal Contractor Mandate.

**(2) Who does the CMS Rule cover?**

The CMS Rule does not apply to all healthcare providers. It only applies to certain CMS Certified Providers who have gone through the certification and registration process and are directly regulated by CMS. Under this rule, all staff employed by a Certified Provider who interact with other staff, patients, residents, clients, or program participants must be vaccinated, unless the employer determines that the employee is eligible for an exemption either as an accommodation under the Americans with Disabilities Act (ADA) because of a recognized medical condition or a religious exemption.

### **(3) Who does the OSHA Rule cover?**

OSHA does not generally apply to state and local governments, regardless of size, unless the state has opted into coverage. Alabama has not done so; therefore, the OSHA rule will not apply to Alabama counties. Further, the enforcement of this Rule has been temporarily stayed by the United States Court of Appeals for the Fifth Circuit.

### **(4) Who does the Federal Contractor Mandate cover?**

The Federal Contractor mandate will apply to almost all new, renewed, and extended federal contracts for services, construction, or lease, that are valued at an amount equal to or greater than the simplified acquisition threshold, which is generally set at \$250,000.00.

### **(5) Does the Federal Contractor Mandate apply to existing contracts?**

This requirement will not generally apply to any contract awarded before October 15, 2021, unless the existing contract has specific language allowing for certain modifications. It may apply to contracts awarded between October 15 and November 14 if the solicitation was made after October 15. It will apply to all contracts awarded after November 14. This requirement flows down to all tiers of subcontracts, except those that are strictly for the provision of goods.

Certain federal agencies are, however, in the process of requesting or requiring modifications to existing contracts to include the requirement. This process varies from agency to agency and may depend on the language in the contract itself. It is therefore very important that all current federal contracts be identified and reviewed.

### **(6) What is the language that will be included in future contracts?**

The current suggested language is as follows: "The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at: <https://www.saferfederalworkforce.gov/contractors>." Contractors will

also be required to include the substance of this clause to applicable subcontracts. This guidance currently provides that all covered employees must be fully vaccinated by January 4, subject to certain exemptions for religious and medical purposes. It is important to note that this language will require the contractor to keep up with current guidance.

**(7) Does this requirement apply to federal grants?**

No. The mandate does not currently apply to grants.

**(8) What if one of my employees claims an exemption?**

The Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1965 have long governed the circumstances under which employees must be exempted from certain vaccine requirements imposed by schools, employers, etc. The current federal guidance is that an employer should continue to follow its own regular processes for granting exemptions, and that the federal government will abide by the employer's decision. The employer is expected to institute adequate health and safety practices to govern such exempted employees; additional federal guidance on such practices is expected.

Alabama has now created a specific process for employees to claim an exemption from any employer-imposed COVID-19 requirement. Employees who wish to seek an exemption must now only complete a standardized exemption form, which creates a presumption that an exemption is appropriate. Employees may appeal the denial of an exemption through an administrative legal process that will be put into place by the Department of Labor. Importantly, an employer who terminates an employee solely on the basis of their vaccinated status must keep paying an employee for the longer of either seven (7) calendar days or until an administrative law judge issues a ruling in the employer's favor.