



Federal Contractor Vaccination Mandate Frequently Asked Questions

1) What is the legal authority for a vaccine mandate?

The President and the federal government have broad discretion to impose these kinds of requirements in federal contracts. Specifically, the President has authority under the Constitution and the laws of the United States, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and section 301 of title 3, United States Code.

The authority is granted to ensure that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument. The executive order asserts that its safeguards will decrease the spread of COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work for the Federal Government.

The statutes cited above, and the power of the President set forth in the Constitution are very likely to provide the federal government with the power to impose a vaccine mandate with federal contractors.

2) What is the definition of a federal contractor under the executive order?

The executive order's definition of the term "covered contract" is very broad. It applies to Federal contracts and contract-like instruments, which includes "contracts and any subcontract of any tier thereunder." Notably, the order is not limited to only Federal procurement contracts executed under the Federal Acquisition Regulation ("FAR"). The order provides numerous examples of covered contracts, such as procurement contracts, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, services agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing.

Utilities are likely to have contracts with the federal government that satisfy the order's definition, including contracts for electric service and gas transportation, demand response contracts, permits,

licenses, and rights of way agreements. Utilities also may be covered by the executive order because they are likely to be subcontractors of federal contractors.

3) What is the UWUA's position on the vaccine mandate?

While we encourage all UWUA members to get vaccinated, we object to employer vaccine mandates unless negotiated with UWUA locals. Here, because the federal contractor vaccine requirements are instituted pursuant to government order, employers are relieved from a bargaining obligation under the National Labor Relations Act. However, employers covered by the vaccine mandate do have a duty to bargain over the effects of a mandate upon request of the Union.

4) What is the UWUA doing about the vaccine mandate?

We are assisting UWUA locals in ensuring that vaccine mandates are limited to those employers and members that are required to be vaccinated by the Executive Order for Federal Contractors or by the OSHA Emergency Temporary Standard. The UWUA is also assisting Local Unions in bargaining over the effects of a vaccine mandate. The UWUA will refer members to the EEOC for guidance and information related to medical and religious accommodations required by law.

5) What if I refuse to be vaccinated?

You could face disciplinary action up to and including discharge unless your employer approves your request for an exception on health or religious grounds. UWUA locals are only able to bargain over the effects of a vaccine mandate not whether you fall under the mandate. During the effects bargaining UWUA locals can seek to negotiate provisions where non-vaccinated employees are not disciplined. This will be part of the bargaining process.

6) What if I face disciplinary action because I refuse to get vaccinated? Will the union represent me?

If you face disciplinary action because you refuse to get vaccinated, you should contact your local union to discuss the fact-specific options in your individual case. However, you should be aware that arbitrators will generally uphold disciplinary action if an employee refuses to comply with governmental regulations that their employer is required to follow.

7) Why isn't the UWUA filing a lawsuit against the vaccine mandate?

UWUA attorneys and other legal professionals have evaluated the executive order and any potential legal arguments to narrow or overturn the federal contractor vaccine mandate executive

order and have concluded that a lawsuit by the UWUA is not viable for several reasons.

First, the UWUA does not have standing to file a lawsuit because the Union is not a federal contractor. An employer that is a federal contractor may have standing to file suit. Second, the government has wide discretion to impose work requirements on employees of a federal contractor. Third, the order has an express provision for religious and medical exemptions as required by law. Fourth, there is well established precedent from the Supreme Court and other federal courts upholding mandatory vaccinations in the interest of public health.

In fact, the U.S. Supreme Court has already refused to enjoin vaccine mandates for students at a public university, for New York City employees and for Maine health care workers.

You should be aware that the federal contractor mandate has been challenged in court by several states. The outcome of that litigation, if successful, will likely impact UWUA-represented federal contractors.

8) Is asking for proof of my COVID-19 vaccination status a violation of my rights under HIPAA?

In general, the HIPAA Rules do not apply to employers or employment records. HIPAA only applies to HIPAA covered entities – health care providers, health plans, and health care clearinghouses – and, to some extent, to their business associates. If an employer asks an employee to provide proof that they have been vaccinated, it is not a HIPAA violation.