

ALERT

New COVID-19 Related Mandates May Require D.C. Employers and Federal Contractors to Revise Existing Policies

July 30, 2021

WHAT: Continued concern about the spread of the Delta variant of the Coronavirus (COVID-19) spurred action by President Biden and District of Columbia Mayor Muriel Bowser that will likely affect the operations of federal government contractors and D.C. employers.

D.C.'s Reinstated Indoor Mask Mandate

On Thursday, July 29, 2021, D.C. Mayor Muriel Bowser announced that the District would once again require all individuals over the age of two to wear masks indoors, regardless of vaccination status. The Mayor's Order instituting the mandate, Mayor's Order 2021-097, will go into effect on Saturday, July 31, 2021. The Order comes a little more than two months after D.C. lifted its previous mask mandate and follows new guidance from the U.S. Centers for Disease Control (CDC) encouraging the use of masks indoors in areas of the country with a "high" or "substantial" virus transmission rate. As of July 28, 2021, D.C. had reached that milestone because the District reported between 50 and 100 new cases of COVID-19 infection per 100,000 residents in the previous seven calendar days.

Mayor Bowser noted in her remarks concerning the new mask mandate that the District's position on workplace reopening had not changed and that the District would "continue to tell people to come to their offices that [are] open." The Order provides that businesses may establish stricter requirements than those mandated under the Order, including requiring proof of vaccination. The Order further provides that employers "may take appropriate employment actions against their employees who endanger themselves or others by

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being in violation of this Order . . .”

The Order supersedes and does not incorporate the District’s previous mask mandates and COVID-19 Orders “to the extent of any inconsistency,” which calls into question the applicability of prior guidance permitting exceptions to the District’s indoor mask mandates, including, for example, an exception allowing workers to remove their masks while working “in an enclosed office that no one else is permitted to enter.”

As was the case with the District’s previous mask mandates, penalties for violation of the Order may include fines of up to \$1,000 per violation and the loss of licenses, permits, or other authorizations to operate in the District.

White House COVID-19 Mandates for Federal Employees and Contractors

Also on July 29, 2021, President Biden formally announced his administration’s mandate requiring all federal employees and onsite contractors to sign an attestation confirming that they have been vaccinated. Workers who attest to their fully vaccinated status would still be required to wear masks in federal buildings in areas where the virus transmission rate is considered “substantial.”

Workers who do not attest to being fully vaccinated are subject to restrictions on official travel and must agree to wear masks at all times, comply with social distancing requirements, and submit to weekly or twice-weekly screenings for COVID-19. The mandate also extends to visitors to federal facilities and requires them to sign a written attestation confirming their vaccination status and, if they are not vaccinated, to wear masks and provide proof that they have received a negative COVID-19 test within the previous three days. Guidance from the White House Safe Federal Workplace Task Force provides that individual federal agencies will be responsible for establishing programs to test federal employees and onsite contractors who are not fully vaccinated or decline to disclose their vaccination status.

This latest move from the Biden administration stops just short of mandating vaccinations for federal employees and contractors, but President Biden’s July 29 remarks clarify that he and his administration are strongly considering mandates as a next step should COVID-19 infection rates continue to increase.

Additionally, the White House’s July 29, 2021, Fact Sheet indicates that the Biden Administration is working to extend these new standards to all federal contractors and will continue to encourage private businesses to enact similar policies:

These rules should not only apply to federal workers and onsite contractors. President Biden is directing his team to take steps to apply similar standards to all federal contractors. The administration will encourage employers across the private sector to follow this strong model.

President Biden doubled down on the idea that all federal contractors should plan to either ensure that their workers are vaccinated or ensure that they comply with enhanced distancing and testing standards soon when he noted in his Thursday remarks that “ [i]f you want to do business with the federal government, [you should] get your workers vaccinated.”

TAKEAWAYS: Many employers relaxed their mask and social distancing requirements in accordance with guidance from the Centers for Disease Control and orders from the District of Columbia earlier this year. Thursday's federal and "state" actions will require those employers to revisit their policies to ensure compliance with current mandates and regulations. Federal contractors with employees who work onsite in federal buildings or on sites controlled by the federal government should also closely review the guidance from the White House Safe Federal Workplace Task Force and coordinate with relevant federal agencies to ensure that they and their employees are fully informed of and compliant with the new requirements. Federal contractors should also be on alert for potential additional mandates that could extend to all of their operations in relation to a federal government contract.

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