



**Department of Air Force
Civilian Force Management Directorate
AF/A1C
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COVID-19 VACCINATION MANDATE INJUNCTION FOR CIVILIAN EMPLOYEES GUIDANCE

On January 21, 2022, the United States District Court for the Southern District of Texas issued a nationwide injunction, preliminarily suspending the Federal government's ability to implement and enforce the Coronavirus Disease 2019 (COVID-19) vaccination requirement for Federal civilians, mandated by Executive Order (E.O.) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, dated September 9, 2021. This guidance is intended to provide specific information for commanders, supervisors, and civilian employees about the impact of that nationwide injunction on Department of the Air Force (DAF) implementation and enforcement of the COVID-19 vaccination requirement for DAF civilian employees.

This guidance supersedes *DAF Civilian Employee Mandatory COVID-19 Vaccination Guide (Revision 2)* dated January 14, 2022, to the extent it is inconsistent with this publication. Further, aspects of the Department of Defense (DoD) *Force Health Protection Guidance (Supplement 23 - Revision 3)* dated December 20, 2021, related to mandatory civilian employee COVID-19 vaccinations (including attestation of vaccination status) are suspended.

All other workplace safety protocols, guidance, and force health protection measures remain in effect (e.g., masking, physical distancing, travel and meeting limitations, screening testing, and restriction from the workplace, etc.).

GENERAL INFORMATION

To ensure compliance with the applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated depending on the course of ongoing litigation, the DAF will take no action to implement or enforce the COVID-19 vaccination requirement for civilian employees pursuant to E.O. 14043.

Subsequent to the injunction order referenced above, the Office of Management and Budget (OMB) and the White House's Safer Federal Workforce Task Force released preliminary information, and the DoD has issued additional guidance, Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) memorandum, *Compliance with Court Order in the Case of Feds for Medical Freedom, et al. v. Biden, et al., No. 21-cv-356 (S.D. Tex.)*, dated January 27, 2022. While the situation remains fluid, the information below can be considered advance guidance on what to expect in the coming days and should be utilized until further notice.

ONBOARDING/HIRING ACTIONS/JOB ANNOUNCEMENTS

DAF organizations should conspicuously note on Federal websites where they post job opportunity announcements that the vaccination requirement for Federal civilian employees pursuant to E.O. 14043 is currently not being implemented or enforced. DAF organizations should use the following as a template for banners or similar posts on such Federal websites with civilian job opportunity announcements:

“To ensure compliance with an applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated, depending on the course of ongoing litigation, the Federal Government will take no action to implement or enforce the COVID-19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Therefore, to the extent a Federal job announcement includes the requirement that applicants must be fully vaccinated against COVID-19 pursuant to Executive Order 14043, that requirement does not currently apply. Federal agencies may request information regarding the vaccination status of selected applicants for the purposes of implementing other workplace safety protocols, such as protocols related to masking, physical distancing, travel restrictions, screening testing, and restriction from the workplace.”

If an organization is not able to conspicuously note such a general notice where job opportunity announcements are posted, they should instead modify the existing individual job opportunity announcements to remove reference to vaccination requirements pursuant to E.O. 14043 or add a notice consistent with the template notice above.

DAF organizations should not add references to a vaccination requirement pursuant to E.O. 14043 in new job opportunity announcements while the nationwide injunction is in place. DAF organizations are encouraged to provide notice to job applicants that the agency will request information regarding the vaccination status of applicants for the purposes of implementing other workplace safety protocols, such as protocols related to masking, physical distancing, travel restrictions, screening testing, and restriction from the workplace.

DAF organizations should reissue tentative and final offers of employment to modify the reference to the COVID-19 vaccination requirement pursuant to E.O. 14043. DAF organizations should use the following as a template for language in such letters:

“To ensure compliance with an applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated, depending on the course of ongoing litigation, the Federal Government will take no action to implement or enforce the COVID-19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Federal agencies may request information regarding the vaccination status of selected applicants for the purposes of implementing other workplace safety protocols, such as protocols related to masking, physical distancing, travel restrictions, screening testing, and restriction from the workplace.”

DAF organizations should proceed with setting Entrance On Duty (EODs) and onboarding employees, regardless of their status related to the vaccination mandate, and regardless of whether they have pending exemption requests. For current employees where promotions or

salary increases were delayed due to not meeting the mandate, Requests for Personnel Actions (RPAs) may now be backdated as of January 21, 2022, but not prior to that date.

COLLECTION, MAINTENANCE AND USE OF VACCINATION INFORMATION AND DOCUMENTATION

Given the different safety protocols for individuals who are fully vaccinated and for those who are not, DAF commanders and supervisors need to ask, when they do not already know, about the COVID-19 vaccination status of their DAF civilian employees.

DAF organizations can continue to request, but not require, and may receive submission of vaccination information and documentation (including proof of primary series vaccination, additional doses, and booster shots) from employees and potential employees who have received an offer of employment. They may maintain, review, and use that information and documentation for the purposes of implementing safety protocols based on vaccination status, such as masking, physical distancing, travel restrictions, screening testing, and restriction from the workplace. Such information should be gathered without using the DD Form 3175; use of DD Form 3175 is suspended during the injunction, for both employees and applicants.

Medical and other information collected from individuals, including vaccination information and test results, will be treated in accordance with applicable laws and policies on privacy, including the Privacy Act of 1974, the Rehabilitation Act of 1973, and DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, dated January 29, 2019. Such information, including vaccination status, will be accessible only to authorized DoD personnel who have a need to access the record in the performance of their duties to implement this guidance. Authorized DoD personnel may include, but may not be limited to, commanders, supervisors, and other authorized human resources representatives assigned and/or delegated responsibilities in implementing this guidance. Medical information regarding civilian employees must be kept in a file separate from other personnel files.

Commanders will establish local processes for gathering vaccination status, when that information is needed. DAF civilian employees who are unvaccinated for COVID-19, or who decline to disclose their COVID-19 vaccination status, will be subject to COVID-19 screening testing in accordance with applicable DAF guidance, as well as other mitigation measures appropriate for unvaccinated personnel.

The immediate supervisor has responsibility for front-line implementation of workplace safety measures, and therefore may need information regarding each of their employees' vaccination status. Likewise, unit commanders have responsibility for implementing this guidance and establishing Force Health Protection guidelines and workplace safety measures, and therefore may also need this information for employees in their units.

Where vaccination status documentation is submitted, unit commanders, or their civilian equivalents, will establish a dedicated, unit-level file solely for the purpose of maintaining any such submitted vaccination status documentation. No other medical-related documentation of any kind (including test results, medical exemptions, etc.) will be kept in this file. The file will be treated similarly to a medical record for confidentiality purposes. Maintenance of, and access to,

the file will be in accordance with applicable law and policy, including appropriate privacy protection measures.

Providing vaccination status is currently voluntary (i.e., employees may decline to state their vaccination status). However, failure to provide vaccination status will result in the employee being regarded as not-fully-vaccinated for purposes of implementing safety measures in accordance with Force Health Protection guidance, including with respect to masking, physical distancing, travel restrictions, screening testing, and restriction from the workplace, and potential restrictions on access to DoD facilities.

When a civilian employee indicates that they decline to respond to inquiry regarding their vaccination status, and therefore do not disclose their vaccination status, commanders and supervisors should not further inquire into their vaccination status, unless there is a business necessity for the information, as determined on a case-by-case basis. Only in very limited circumstances, such as determining how long an employee with a known or suspected exposure to COVID-19 must temporarily remain out of the workplace, or whether an employee may be exempted from certain force health protection requirements as authorized in applicable policy, would it be reasonably necessary to ask the employee if they would like to voluntarily update their vaccination status for this purpose.

DAF organizations may review vaccination documentation and information that was submitted to the agency during implementation of E.O. 14043 prior to issuance of the injunction on January 21, 2022, for the purposes of using that information to implement other safety protocols that are based on vaccination status. If an employee does not submit their vaccination information and documentation, they should be treated as not fully vaccinated for the purposes of implementing safety protocols that are based on vaccination status.

EXEMPTION REQUESTS

DAF organizations must not process requests they have already received for exemptions to the COVID-19 vaccination requirement. They also should not ask employees for additional information that may be required to process previously submitted exemption requests, or take any other steps related to adjudication of such requests. DAF organizations should also notify employees with pending vaccination exemption requests that implementation or enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 is currently suspended and that an exemption therefore is not necessary as long as the nationwide injunction is in place.

If an agency receives a request for an exemption from the COVID-19 vaccination requirement for civilians pursuant to E.O. 14043, the agency should accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation or enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 is currently suspended and that an exemption is therefore not necessary as long as the nationwide injunction is in place. Use of DD Forms 3176 and 3177 are suspended during the injunction, pursuant to the OUSD(P&R) memorandum, *Compliance with Court Order in the Case of Feds for Medical Freedom, et al. v. Biden, et al., No. 21-cv-356 (S.D. Tex.)*, dated January 27, 2022.

DAF organizations should continue processing requests for exemptions from other requirements, such as masking, screening testing, physical distancing, etc. The injunction does not apply to the implementation of safety protocols and all requests for exemptions from those protocols must be accepted and processed expeditiously. In cases where multiple requests were submitted and combined for processing (for example, requests for exemption from vaccination, from masking, and from screening testing), the vaccination exemption request must be bifurcated from the other exemption requests. The vaccination exemption request is to be held and not further processed, while the other exemption requests are to continue processing. The approval authority for exemptions from these other requirements remains with the authorized decision authorities as outlined in the Secretary of the Air Force memorandum, *Delegation of Authority for Deciding Exemptions for Mandatory COVID-19 Vaccination for the DAF Civilian Employees*, dated November 3, 2021. Requests for exemption from these other non-vaccination requirements are to be processed in accordance with *DAF Operational Instructions for Decision Authority Support Office/Exemption Review Team Members and Decision Authorities*, dated 19 January 2022, and *DAF Civilian Employee Mandatory COVID-19 Vaccination Guide (Revision 2)* dated January 14, 2022.

ENFORCEMENT ACTIONS

DAF organizations should not continue to undertake preparatory work, such as drafting enforcement letters concerning civilian disciplinary or adverse actions and should hold in abeyance all disciplinary actions associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043.

This includes temporarily halting active suspensions as of January 21, 2022, and holding proposals to suspend or terminate non-compliant employees in abeyance. DAF organizations should inform, in writing, all employees who are subject to proposed or active disciplinary action that the implementation or enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 is currently suspended and that the disciplinary action is being held in abeyance as long as the nationwide injunction is in place. If there are other misconduct grounds for the action, outside of implementation of EO 14043, the proposing official should consider whether the action should be rescinded, with a subsequent action proposed related to the other misconduct.

Commanders and supervisors are strongly encouraged to consult with their servicing Civilian Personnel Office (CPO) and legal office regarding the most appropriate way to address this type of circumstance. Where an employee is currently serving a suspension for failure to comply with the vaccination mandate, such suspension action should be terminated and the employee should be brought back to duty effective January 21, 2022. Time served on suspension prior to that date remains suspension time until such time as the final outcome of the pending litigation is determined.

At this time, DAF organizations do not need to revoke or rescind disciplinary actions associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 that were already effectuated prior to the nationwide injunction. For example, DAF organizations do not need to repeal, rescind, or revoke letters of education and counseling, letters of reprimand, or proposals of suspensions, which may have been stored in employee Official Personnel Folders

or other agency files prior to January 21, 2022. In addition, DAF organizations do not need to reinstate employees who have been terminated because of non-compliance with the COVID-19 Safer Federal Workforce Task Force vaccination requirement pursuant to E.O. 14043.

DAF organizations should temporarily halt any active suspensions as of January 21, 2022, and should restore those employees to pay status. DAF organizations should not use prior disciplinary actions taken pursuant to E.O. 14043 as predicates for further discipline (i.e., should not consider them in unrelated disciplinary matters for purposes of progressive discipline). DAF organizations should continue processing disciplinary actions for other performance or compliance issues unrelated to enforcement of the vaccination requirement pursuant to E.O. 14043. This includes, for example, taking disciplinary actions associated with failure to comply with other COVID-19 workplace safety protocols (e.g., masking, physical distancing, travel and meeting limitations, screening testing, and restriction from the workplace, etc.).

Employees who resigned solely due to the COVID-19 vaccination requirement (and as indicated on their SF-50) will not have any automatic right to non-competitive reinstatement where the resignation took place prior to the injunction on January 21, 2022.

DUTY STATUS FOR VACCINATION EVENTS

Since the mandate to be vaccinated is currently suspended, duty time is not currently appropriate for employees to receive COVID-19 vaccinations and/or receive booster shots. However, employees will receive up to 4 hours of administrative leave official time to obtain a vaccine dose and up to 2 days of administrative leave for adverse reactions.