

Frequently Asked Questions Related to Compliance with the Applicable Preliminary Nationwide Injunction on Implementation and Enforcement of the Vaccination Requirement Pursuant to Executive Order (E.O.) 14043

Guidance to Agencies as of January 24, 2022

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. Safer Federal Workforce Task Force guidance on other Federal agency safety protocols based on vaccination status—including guidance on protocols related to masking, distancing, travel, testing, and quarantine—remains in effect.

Below are answers to frequently asked questions as guidance for agencies related to compliance with the nationwide injunction.

Maintenance and Use of Vaccination Information and Documentation

Q: Can agencies continue to require and 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, and maintain, review, and use that information and documentation for the purposes of implementing safety protocols based on vaccination status such as masking, distancing, testing, travel, and quarantine?

A: Yes, agencies can continue to require and 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, and maintain, review, and use that information and documentation for the purposes of implementing safety protocols based on vaccination status such as masking, distancing, testing, travel, and quarantine. This includes reviewing vaccination documentation and information that was submitted to the agency during implementation of E.O. 14043 prior to issuance of the injunction, 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.

Job Posting Announcements and Hiring Actions

Q: Should agencies modify existing job postings that note there is a vaccination requirement for Federal employment pursuant to E.O. 14043?

A: Agencies should conspicuously note on Federal websites where they post job opportunity announcements that the vaccination requirement for Federal employees pursuant to E.O. 14043 is currently not being implemented and enforced. Agencies can use the following as a template for banners or similar posts on such Federal websites with 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, testing, travel, and quarantine.”

If an agency is not able to conspicuously post such a general notice where job opportunity announcements are posted, the agency 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.

Agencies should not add reference to a vaccination requirement pursuant to E.O. 14043 in new job opportunity announcements while the nationwide injunction is in place. Agencies 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, testing, travel, and quarantine.

Q: Should agencies that have issued tentative and final offers of employment that reference the vaccination requirement pursuant to E.O. 14043 re-issue revised letters?

A: Yes, agencies should reissue tentative and final offers of employment to modify the reference to the COVID-19 vaccination requirement pursuant to E.O. 14043. Agencies can 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, testing, travel, and quarantine.”

Exception Requests

Q: Can agencies continue to process requests for disability or religious exceptions to the COVID-19 vaccination requirement pursuant to E.O. 14043 while the applicable preliminary nationwide injunction is in place?

A: No, agencies should not continue to process requests they have already received for disability or religious exceptions to the COVID-19 vaccination requirement pursuant to E.O. 14043. They also should not ask employees for additional information that may be required to process previously submitted exception requests, or take any other steps related to adjudication of exception requests.

Agencies also should notify employees with pending exception requests that implementation or enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the nationwide injunction is in place.

If an agency receives a request for an exception from the COVID-19 vaccination requirement 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 enjoined and that an exception therefore is not necessary so long as the nationwide injunction is in place.

Enforcement Actions

Q: Can agencies continue to undertake preparatory work associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 while the applicable preliminary nationwide injunction is in place?

A: No, agencies should not continue to undertake preparatory work, such as drafting enforcement templates concerning disciplinary or adverse actions, associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043.

Q: What should agencies do regarding disciplinary actions already in progress associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 while the applicable preliminary nationwide injunction is in place?

A: Agencies should hold in abeyance all disciplinary actions related to 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.

Agencies should inform 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 enjoined and that the disciplinary action is being held in abeyance so long as the nationwide injunction is in place.

Q: Can agencies take disciplinary action to enforce other COVID-19 workplace safety protocols?

A: Agencies 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, such as masking, physical distancing, or testing.

Q: Do disciplinary actions associated with enforcement of the COVID-19 vaccination requirement pursuant to E.O. 14043 that were already completed prior to the nationwide injunction need to be repealed, revoked, or rescinded?

A: No, at this time agencies 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, agencies do not need to repeal, rescind, or revoke letters of education and counseling, letters of reprimand, or proposals of suspensions, which may be stored in employee Official Personnel Folders or other agency files. In addition, agencies do not need to reinstate employees who have been terminated because of non-compliance with the COVID-19

vaccination requirement pursuant to E.O. 14043. Agencies should temporarily halt any active suspensions as of January 21, 2022, and should restore those employees to pay status.

Agencies should not use prior disciplinary actions taken pursuant to E.O. 14043 as predicates for further discipline.

Other Vaccination Requirements

Q: Can agencies with COVID-19 vaccination requirements unrelated to E.O. 14043 and pursuant to other authorities continue to implement and enforce those requirements?

A: Yes, agencies with COVID-19 vaccination requirements unrelated to E.O. 14043 and pursuant to other authorities can continue to implement and enforce those requirements. This includes proceeding with receiving, reviewing, and processing requests for exception to those requirements and enforcing the requirements through disciplinary actions consistent with agency policies.