

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

Guidance to agencies originally issued January 24, 2022 and updated August 17, 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 (E.O.) 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Safer Federal Workforce Task Force guidance on other Federal agency safety protocols 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, request, and collect 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?

A: As soon as possible and no later than Monday, August 22, 2022, to be consistent with Task Force guidance, agencies should pause requiring or requesting employees and potential employees to provide information about their COVID-19 vaccination status regardless of COVID-19 Community Levels, where COVID-19 safety protocols do not vary based on vaccination status.

Consistent with CDC guidance, for most Federal workplaces, COVID-19 workplace safety protocols will not vary based on vaccination status or otherwise depend on vaccination information. Where this is the case, agencies should no longer request or collect vaccination status information.

Agencies with employee COVID-19 vaccination requirements unrelated to E.O. 14043 and pursuant to other authorities can continue to require documentation of proof of vaccination from employees and potential employees subject to those requirements, as can agencies with other setting-specific dependencies on collecting vaccination information from employees in those settings. Agencies in these positions should consult with the Task Force, the agency's General Counsel, and the agency's Senior Agency Official for Privacy.

When agencies pause requiring, requesting, and collecting vaccination status information, such agencies must continue to preserve their vaccination information collection systems and the information collected to date from employees in accordance with National Archives and Records Administration records schedules; COVID-19 workplace safety may change in the future, or collection of this information from Federal employees may otherwise need to resume.

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.”

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.

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.”

Exception Requests

Q: Can agencies 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 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, nor 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.

Q: Can agencies renew, revise, or extend Paperwork Reduction Act clearance of their E.O. 14043 exception request forms while the applicable preliminary nationwide injunction is in effect?

A: No. The injunction prevents agencies from taking any action to implement or enforce the COVID-19 vaccination requirement pursuant to E.O. 14043, including actions to process requests for disability or religious exceptions. Accordingly, agencies should not seek, and OMB will not approve, renewals, revisions, or extensions for a clearance under the Paperwork Reduction Act (PRA) of E.O. 14043 exception request forms while the applicable preliminary nationwide injunction is in effect.

If an agency's PRA clearance for an E.O. 14043 exception request form expires during the applicable preliminary nationwide injunction, agencies should no longer have employees who want to submit an exception request fill out the expired form. However, as previously advised, agencies should continue to accept any request for an exception (even if informally made) and hold it in abeyance during the pendency of the injunction. If the injunction is lifted, agencies may then seek renewed clearance of their exception request form and, upon receiving such clearance, ask employees with pending exception requests to provide any further information that is needed.

Enforcement Actions

Q: Can agencies 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 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.

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.