



October 26, 2021

To: Federal Contractors in Montana
From: Attorney General Austin Knudsen
Re: Federal vaccine mandate and illegal vaccine discrimination

Following guidance I issued last week to clear up confusion disseminated by President Biden during his September 9th speech, my office has received additional inquiries as to whether federal contractors are required to mandate vaccines for their employees. In that speech, the President claimed that federal contractors will be subject to mandatory vaccination requirements for their workforce. This was misleading.

Issued that same day, Federal Executive Order 14042 is directed at federal agencies – not federal contractors. It states that executive departments and agencies shall ensure that *new* contracts and contract-like instruments shall include a clause that the contractor comply with guidance that was later published by the Safer Federal Workforce Task Force.

The Executive Order applies only to *new* federal contracts, *new* contract-like instruments, *new* solicitation for contracts, or *renewals* of existing federal contracts. **By the plain language of the President's Executive Order, there is no vaccination requirement imposed on existing federal contractors.** It does not, and cannot, require federal contractors with existing agreements with the federal government to discriminate against their employees based on vaccination status.

Further, the Order plainly states in Section 5 subsection (b) that it does *not* apply to federal grants, Indian Tribes under the Indian Self-Determination and Education Assistance Act, contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, or subcontracts solely for the provision of products.

DEPARTMENT OF JUSTICE

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STATE OF MONTANA

Status of the law:

House Bill 702, now codified as M.C.A. § 49-2-312, is the law in Montana. The law prohibits employers, including federal contractors, from discriminating against people based on their vaccination status. If the federal government has not executed a *new* contract with a federal contractor, then the President's Executive Order simply does not apply. **In such an instance, Montana law applies, and discrimination based on vaccination status is illegal.**

What to do if you are discriminated against:

Violators of the law can – and should – be held accountable. Anyone suffering discrimination by an employer based on their vaccination status should immediately contact the Montana Department of Labor & Industry's Human Rights Bureau at 406-444-4365 or 1-800-542-0807. A formal complaint must be filed with the Bureau within 180 days of the alleged discriminatory action.

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