

Federal District Judge Enjoins the Federal Contractor COVID-19 Vaccine Mandate Nationwide

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On December 7, 2021, Judge R. Stan Baker of the U.S. District Court for the Southern District of Georgia [enjoined](#) the federal government from enforcing [Executive Order 14042's COVID-19 vaccination mandate](#) for federal government contractors and subcontractors on a nationwide basis pending a further order from that court. This ruling follows a [November 30, 2021 order](#) that similarly enjoined the contractor vaccine mandate in the states of Tennessee, Ohio, and Kentucky. This is the latest in a growing number of court decisions enjoining President Biden's vaccine mandates, as the federal government has been barred, at least for now, from enforcing each of the three federal vaccination mandates applicable to private sector employers – the federal contractor mandate, the Center for Medicare & Medicaid Services (CMS) mandate, and the OSHA Emergency Temporary Standard.

The Georgia litigation challenging the federal contractor vaccination mandate was brought by the States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, and West Virginia, with the Associated Builders and Contractors (ABC) trade organization also intervening as a plaintiff. In comparison to the earlier Kentucky ruling, the court based its award of injunctive relief on relatively narrow grounds, finding that the Federal Property and Administrative Services Act's delegation of authority to the President to set federal procurement policy to achieve the objectives of "economy and efficiency" did not reach so far as to authorize the issuance of public health regulations. Unlike the Kentucky ruling, the court did not address additional arguments asserting procedural and constitutional deficiencies in Executive 14042. However, the court granted a broader scope of injunctive relief than the Kentucky injunction, finding that the nationwide scope of ABC's membership required that enforcement the mandate be enjoined nationwide in order to grant complete relief.

We expect that the government will appeal the preliminary injunction to the U.S. Court of Appeals for the Eleventh Circuit. Notably, on December 6, 2021, the Eleventh Circuit rejected the State of Florida's challenge to the CMS vaccine mandate, finding that mandate to be within the government's authority, though the predictive weight of that ruling could be limited because the two mandates were based on independent statutory grants of authority.

Pending a contrary ruling from the Eleventh Circuit or the U.S. Supreme Court, the federal government is barred from enforcing Executive Order 14042's vaccine mandate in any state or territory. Given the potential that the injunction could be reversed, and the lack of clarity regarding what if any adjustments the federal government would make to the vaccine mandate in that event, contractors may wish to continue their preparations in order to avoid being caught off-guard. In addition, the court's ruling does not prohibit federal contractors who wish to voluntarily implement their own vaccine requirement for their workforces from doing so, though the lack of an enforceable federal mandate means that such employers will need to carefully consider the effect of state laws which limit or prevent employers from requiring vaccination.

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