

Federal Court Blocks Vaccine Mandate for Government Contractors

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On December 7, 2021, the US District Court for the Southern District of Georgia granted a preliminary injunction to temporarily halt the enforcement of the Biden administration's vaccine mandate for government contractors nationwide. The court held that President Biden's executive order likely exceeded his authority under the Federal Property and Administrative Services Act, 40 U.S.C. § 101 *et seq.* In his decision, Judge Baker stated the "direct impact" of President Biden's executive order "goes beyond the administration and management of procurement and contracting; in its practical application ... it operates as a regulation of public health."^[1] The injunction prevents enforcement of the vaccine mandate for prime contractors and subcontractors on all covered contracts "in any state or territory of the United States of America."

Background on the Vaccine Mandate for Government Contractors

President Biden signed Executive Order 14042 on September 9, 2021, which directed the Safer Federal Workforce Task Force to issue guidance on adequate COVID-19 safeguards for federal government contractors and subcontractors.^[2] On September 24, the Task Force issued guidance pursuant to Executive Order 14042 requiring all covered contractors to be fully vaccinated against COVID-19 by January 18, 2022, unless entitled to a legal accommodation.^[3] The executive order also directed the Federal Acquisition Regulatory Council (FAR Council) to amend the Federal Acquisition Regulation to include compliance with the Task Force's COVID-19 guidance. And on September 30, 2021, the FAR Council published a memo to different federal government agencies on how and when to use the new contract clause implementing the COVID-19 guidance.^[4]

Litigation in the Southern District of Georgia

The original lawsuit was filed on October 29, 2021, by several states, including Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, and West Virginia, and the governors and various agencies and entities of those states, including the University System of Georgia. Shortly after filing suit, the states requested a preliminary injunction to stay enforcement of the vaccine mandate. The state plaintiffs were joined by the Associated Builders and Contractors, Inc. (ABC), a national construction trade organization, and its local chapter, ABC of Georgia, which filed a motion to intervene as

plaintiffs and also requested a preliminary injunction.

The Georgia federal court's preliminary injunction is similar to the injunction recently issued by the Eastern District of Kentucky on November 30, 2021. However, the preliminary injunction issued by the Kentucky federal court only applied in Kentucky, Ohio, and Tennessee.^[5] ABC's intervention persuaded the Georgia federal court to broaden the scope of the injunction nationwide rather than limit it to a few states or only the Southern District of Georgia. Judge Baker emphasized that limiting the court's injunction would not provide ABC's nationwide membership with relief on covered contracts in other states and would lead to unwieldy results and more confusion for contractors.

On December 9, 2021, the federal government filed its notice of appeal and an emergency motion to stay the court's preliminary injunction pending appeal to the US Court of Appeals for the Eleventh Circuit in Atlanta.

Conclusion

The Biden administration's vaccine mandate for government contractors remains in limbo as it maneuvers through the appellate process and faces additional legal challenges across the country. Jones Walker attorneys will continue to monitor these changes and the impact they will have on government contractors as courts issue further rulings on the mandate.

[1] *Georgia v. Biden*, No. 1:21cv163, 2021 U.S. Dist. LEXIS 234032, at *39 (S.D. Ga. Dec. 7, 2021).

[2] 86 Fed. Reg. 50,985-88 (Sept. 9, 2021).

[3] The Biden administration's guidance defines "covered contractor" as "a prime contractor or subcontractor at any tier who is a party to a covered contract." Safer Federal Workforce Task Force, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, at p. 3, available at https://www.saferfederalworkforce.gov/downloads/Draft_contractor_guidance_doc_20210922.pdf (last visited Dec. 14, 2021).

[4] FAR Council Guidance, <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf> (last visited Dec. 14, 2021).

[5] *Kentucky v. Biden*, No. 3:21-cv-55, 2021 U.S. Dist. LEXIS 228316, at *44 (E.D. Ky. Nov. 30, 2021).