



## Government Contracts/Labor & Employment Update

December 8, 2021

### Federal Court Issues Nationwide Injunction Against Federal Contractor Vaccination Mandate

In the second federal court ruling in as many weeks, the U.S. District Court for the Southern District of Georgia yesterday issued an order imposing a nationwide injunction against Executive Order 14042 and its vaccination mandate for employees of federal government contractors and subcontractors. This injunction follows a similar ruling from a Kentucky federal court on November 30, which limited the scope of its injunction to the states of Ohio, Kentucky, and Tennessee. With this new ruling, the contractor vaccination mandate is now blocked nationwide.

In his opinion and order, Judge R. Stan Baker ruled that the plaintiffs (seven states, a handful of state governors, various state agencies, and the Associated Builders and Contractors, Inc.) were likely to succeed in their challenge to the Biden administration's ability to use its procurement powers to mandate that certain federal contractors and subcontractors require their employees to receive the COVID-19 vaccine. Much like the Kentucky court, the Georgia court specifically focused on the president's powers under the Federal Property and Administrative Services Act (FPASA), finding that it most likely did not authorize the administration "to direct the type of actions by agencies that are contained in EO 14042." Specifically, the court noted the executive order's impact "goes beyond the administration and management of procurement and contracting" contemplated by the FPASA, and instead operates as a regulation of public health that is not authorized by the statute. The court therefore found that the plaintiffs were likely to succeed in showing that Congress, through the FPASA, did not "clearly authorize"

the president to issue the type of mandate contained in Executive Order 14042.

As an additional basis for its ruling, the Georgia court determined that the executive order lacked a "sufficient nexus" to the FPASA's purposes in order to be authorized by that law. Finding that the executive order will "force at least some individuals to choose between getting medical treatment that they do not want or losing their job," as well as imposing "extensive and costly administrative work" on employers, the court held that Executive Order 14042 was not "reasonably related" to the purposes of the FPASA.

While finding that the president exceeded his statutory authority, the court declined to consider whether the administration followed the appropriate procedural requirements in imposing the vaccination mandate. The court also refused to address the plaintiffs' arguments that Executive Order 14042 is unconstitutional.

Based upon its determination that the vaccination mandate exceeded the president's statutory authority, the court next addressed the scope of its injunction. Unlike the Kentucky court, the Georgia court observed that the plaintiffs included not only individual states and state officials, but also a trade association (the Associated Builders and Contractors, Inc.) "with members all over the country" and a nationwide involvement in federal contracts. The court thus found that anything but a nationwide injunction would not afford sufficient injunctive relief to the trade association's members. Accordingly, the court ruled that "in order to truly afford injunctive relief to the parties before

it," a nationwide injunction against the vaccination mandate was required.

Based on the court's order, federal contractors and subcontractors across the United States are now relieved from complying with the January 18, 2022 vaccination deadline imposed by Executive Order 14042. The injunction's nationwide scope resolves certain ambiguities that were presented by last week's narrower ruling by the Kentucky court and now makes it clear that the vaccination mandate is currently on hold across the United States.

The Georgia court's order is subject to appeal to the U.S. Court of Appeals for the Eleventh Circuit, the same appellate court that on December 6 issued a ruling finding that a similar vaccination mandate for health care workers in certain health care facilities was properly within the authority of the Centers for Medicare and Medicaid Services. As a result, while contractors and subcontractors are most likely relieved from the current January 18, 2022 vaccination deadline, they may be wise not to completely halt existing compliance efforts so that they will not be caught off-guard should the Georgia court's injunction eventually be lifted on appeal.

Our [Government Contracts](#) and [Labor & Employment](#) groups are actively monitoring the situation, as well as the other pending legal challenges to Executive Order 14042, and will provide further updates as additional developments occur. Our lawyers can also provide guidance and assistance to contractors and subcontractors who are trying to navigate their COVID-19 compliance obligations across different jurisdictions.

## FOR MORE INFORMATION

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