

PRESIDENT BIDEN AND FEDERAL GOVERNMENT PRELIMINARILY ENJOINED FROM ENFORCING FEDERAL CONTRACTOR VACCINE MANDATE THROUGHOUT THE UNITED STATES

Hodgson Russ OSHA and Labor & Employment Alert
December 8, 2021

On November 30, 2021, a federal judge for the United States District Court for the Eastern District of Kentucky granted a preliminary injunction that enjoined the federal government from enforcing President Biden’s COVID-19 vaccine mandate for federal contractors and subcontractors. President Biden had sought to impose the mandate through Executive Order 14042, issued on September 19, 2021, and subsequent guidance promulgated by the Safer Federal Workforce Task Force. While the Eastern District of Kentucky injunction temporarily halted enforcement, it was limited in scope to the States of Kentucky, Tennessee, and Ohio. A federal judge in Georgia has now imposed a similar injunction on a nationwide basis.

In a 28-page Order^[1] filed in the United States District Court for the Southern District of Georgia on December 7, 2021, United States District Judge R. Stan Baker granted the motion of an intervenor-plaintiff, Associated Builders and Contractors, Inc. (“ABC”), for a preliminary injunction in a lawsuit challenging the mandate. The Georgia federal court’s Order now enjoins President Biden and other U.S. Government defendants from “enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in any state or territory of the United States of America” during the pendency of the action or until further order of the Court.

Judge Baker’s Order explains his conclusion that the plaintiffs are likely to succeed on the merits of proving that the Federal Property and Administrative Services Act, which President Biden’s Executive Order drew upon as its source of authority, did not clearly authorize the President to issue a mandate that goes far beyond promoting efficiency and economy in procurement and contracting, and which instead “works as a regulation of public health.” The Court further found that plaintiffs had a likelihood of proving that the Executive Order “does not have a sufficient nexus to the purposes of the [Act] and thus does not fall within the authority actually granted to the President,” and that the directives contained within the Executive Order were not authorized by the statute or reasonably related to the purpose of the Federal Property and Administrative Services Act.

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In imposing the nationwide injunction, the Court observed that ABC is a trade organization with broad geographic membership and involvement in federal contracting. Therefore, Judge Baker reasoned, if the injunction were made applicable only in a few states, ABC's membership would have injunctive relief only in some States and not others. The Court went on to explain that "given the breadth of ABC's membership, the number of contracts Plaintiffs will be involved with, and the fact that EO 14042 applies to subcontractors and others, limiting the relief to only those before the Court would prove unwieldy and would only cause more confusion. Thus, on the unique facts before it, the Court finds it necessary, in order to truly afford injunctive relief to the parties before it, to issue an injunction with nationwide applicability."

While the injunction remains in place, the federal government may not enforce the vaccine mandate with respect to covered federal contracts. Federal contractors and subcontractors who might otherwise be subject to the vaccine mandate requirements, or who have signed contracts or modifications at the request of federal agencies with whom they contract, should continue to monitor the situation closely for further developments surrounding this injunction. Businesses that engage in federal contracting should also be mindful that they may be subject to other State-based or local COVID-19-related requirements, or other site-based restrictions when working on or entering government properties. And while the Occupational Safety and Health Administration's Emergency Temporary Standard on COVID-19 Vaccination and Testing ("ETS") is also temporarily enjoined, employers with 100 or more employees who may be subject to that standard should keep watch for updates on decisions from the United States Court of Appeals for the Sixth Circuit for any changes related to the enforcement or application of that OSHA standard.

If you have questions about the federal contractor vaccination mandate, OSHA's ETS, or other general questions about vaccination requirements or OSHA compliance, please contact [Jason Markel](#) (716.848.1395), [Glen Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), or any member of Hodgson Russ's [Labor & Employment Practice](#).

[1] *The State of Georgia v. Joseph R. Biden*, Case No. 1:21-CV-00163 (S.D. Ga. 12/7/21) (Docket #94).