

FYI[®] Alert

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Federal contractor vax mandate blocked nationwide

On December 7, a federal court in Georgia issued a nationwide injunction temporarily blocking the Biden administration's vaccination mandate for federal contractors' employees from taking effect. The court's order follows on the heels of a Kentucky federal judge's preliminary stay of the mandate in three states — Kentucky, Tennessee, and Ohio. Both courts concluded the president likely exceeded his authority with the mandate.

Background

On July 29, President Biden announced a directive requiring every federal employee and onsite contractor to get fully vaccinated against COVID-19 or wear a mask on the job and comply with regular testing. On September 9, the president issued Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). The order required certain government contractors and subcontractors to comply with guidance to be issued by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance). It applied to procurement contracts for services, construction, and concessions that exceed \$250,000. (See our [September 13, 2021 FYI Alert](#).)

On September 24, the Task Force released its [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#) to implement EO 14042. With limited exceptions, the Guidance as amended required covered contractors to ensure their employees were fully vaccinated for COVID-19 by January 18, 2022. Unlike the July 29 directive, the Guidance provided no testing option.

Mandate in legal limbo

On October 29, eighteen states filed three separate lawsuits to block the vaccine mandate for federal contractors. Attorneys general from Alaska, Arkansas, Iowa, Missouri, Montana, Nebraska, New Hampshire, North Dakota, South Dakota and Wyoming filed [suit](#) in federal district court in Missouri, arguing that the mandate violates federal law. The state of Texas filed [suit](#) individually in federal

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district court in Texas, similarly arguing government overreach. Another coalition of states including Georgia, Alabama, Idaho, Kansas, South Carolina, Utah and West Virginia, along with the Associated Builders and Contractors, Inc., challenged the mandate in federal district court in Georgia, also arguing that EO 14042 exceeded the president's authority.

On December 7, the Georgia court found that the EO "goes far beyond addressing administrative and management issues in order to promote efficiency and economy in procurement and contracting and instead, in application, works as a regulation of public health, which is not clearly authorized under the Procurement Act." Concluding that the directives contained in EO 14042 were not authorized by the Federal Property Administrative Services Act (the Procurement Act), the court issued an injunction temporarily blocking the president, the Safer Federal Workforce Task Force, and 18 executive agencies and departments from enforcing the federal contractor vaccine mandate in all covered contracts nationwide. The government is appealing the decision.

Buck comment. Federal courts have also issued nationwide injunctions against both OSHA's Emergency Temporary Standard (ETS) requiring employers with 100 or more workers to ensure that employees are vaccinated against COVID-19 or undergo weekly testing for the virus and the Centers for Medicare and Medicaid Services' (CMS) mandate that covered healthcare workers be fully vaccinated. Both OSHA and CMS have suspended enforcement of their vaccine mandates while the court injunctions remain in effect.

On December 9, the U.S. Senate passed a resolution (S J Res 29) to nullify OSHA's ETS. It faces an uncertain future in the House. However, the White House issued a statement indicating the president would veto the bill if it were to pass both chambers of Congress.

In closing

For now, the vaccine mandate to have federal contractors' and subcontractors' employees fully vaccinated is on hold. Covered contractors should continue to monitor further developments.

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