

Government Contracts

Government Signals Contractor Vaccine Mandate Updates Coming Soon

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On October 18, 2022, the Eleventh Circuit Court of Appeals [entered as its judgment](#) its August 26, 2022 opinion limiting the scope of a nationwide injunction of the Biden Administration's COVID-19 vaccine mandate for federal contractors, which we previously [covered here](#). Just days prior, on October 14, 2022, the Safer Federal Workforce Task Force [issued a website update](#) for Federal Contractors regarding enforcement of the contractor vaccine mandate in light of the anticipated judgment of the court. The update states that the Task Force and the Office of Management and Budget expect to issue at least three new guidance documents on enforcement of the mandate as a result of the Eleventh Circuit's late-August opinion. With somewhat dramatic foreshadowing, the Task Force said the following are expected to issue:

1. OMB guidance to federal agencies on how to comply with current injunctions and whether to include the EO 14042 clause in new solicitations and contracts. Hopefully, this guidance will address the complicated issues we have previously identified related to the patchwork quilt of remaining injunctions, such as determining contract "location," coverage of multi-location contracts, and handling solicitations where some bidders may be covered by an injunction while others are not.

2. The Task Force's updated substantive COVID-19 safety protocols to be required for contractors. The October 14 website update indicates this piece of guidance will be subject to a determination by the Director of OMB that it promotes economy and efficiency in federal contracting, the legal authority upon which EO 14042 has been argued to rest. This might suggest that the second piece of guidance will substantively change the required safety protocols. At a minimum, a new timeline for the vaccination requirement will be issued. Of course, all eyes will be on whether the vaccine mandate is more broadly modified or abandoned.

3. OMB guidance to agencies on the timeline for enforcing the clause when present in contracts. One interesting element of prior updates from the Task Force was the statement that agencies could provide notice that they will enforce the Task Force requirements where the clause is already included in a contract. It appears agencies have not generally exercised this authority, and the latest update indicates a desire for a more coordinated approach to such agency notice. Significantly, the October 14 update makes clear that until and unless OMB issues this third piece of guidance, agencies should not: (1) require contractors to comply with previously issued Task Force guidance; or (2) enforce any contract clauses implementing EO 14042.

The timing of this updated information is itself interesting: the Task Force correctly foreshadowed that the Eleventh Circuit would issue judgment from the August 26, 2022 opinion today, October 18, 2022. That likely reflects that the government neither sought panel review of the Eleventh Circuit decision, nor did it seek a stay pending appeal to the Supreme Court.

This cliffhanger update and the court's judgment are sure to glue all contractor eyes to the Task Force website for the foreseeable future.

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