

Client Alert: Nationwide Injunction of Federal Contractor Vaccine Mandate Issued by US District Court, Southern District of Georgia

Publications

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On December 7, 2021, Judge R. Stan Baker of the U.S. District Court for the Southern District of Georgia issued a nationwide injunction of the Biden Administration's vaccine mandate for federal contractors issued on September 9, 2021 through Executive Order 14042 (EO 14042). This most recent order takes last week's ruling from the Eastern District of Kentucky, which was limited to three states and which we covered here, a significant step further: it blocks enforcement of the vaccine mandate "for federal contractors and subcontractors in all covered contracts in any state or territory of the United States of America."

In its order, the court found that there would be an "extreme economic burden" that contractors "have suffered and will continue to suffer in endeavoring to comply with EO 14042." According to Judge Baker, these burdens include, among other things, the "extensive and costly administrative work by employers" and the predicament of "at least some individuals to choose between getting medical treatment that they do not want or losing their job."

Against that backdrop, Judge Baker stated that the court was "unconvinced, at this stage of the litigation," that the Federal Property and Administrative Services Act (the Procurement Act) authorized President Biden "to direct the type of actions by agencies that are contained in EO 14042." Specifically, the court determined that the vaccine mandate operates as a "regulation of public health." The court concluded the Procurement Act did not "clearly authorize the President to issue the kind of mandate contained in EO 14042, as EO 14042 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."

In addition to finding a lack of clear statutory authorization, the court concluded that EO 14042 does not have a sufficient nexus "to the purposes of the Procurement Act and thus does not fall within the authority actually granted to the President in that Act." The court stated that the government defendants did not cite any cases where a court has upheld an executive order 1) aimed at public health; and 2) imposing similar burdens as EO 14042. The court asserted that under the

government’s proposed reading of the Procurement Act, the President would have the “right to impose virtually any kind of requirement on businesses that wish to contract with the Government (and, thereby, on those businesses’ employees) so long as he determines it could lead to a healthier and thus more efficient workforce or it could reduce absenteeism.”

Unlike last week’s order from the U.S. District Court for the Eastern District of Kentucky, Judge Baker concluded that an injunction with national scope was appropriate under the “unique circumstances” before the George federal court. While noting that courts typically resist universal injunctions, Judge Baker concluded that a nationwide injunction was appropriate here because one of the intervening plaintiffs is a trade association with members throughout the United States and enjoining enforcement in a more limited geographic area would mean that the trade association’s “members would not have injunctive relief as to covered contracts in other states....[and] limiting the relief to only those before the Court would prove unwieldy and would only cause more confusion.”

The nationwide applicability of this injunction adds another factor to the complex landscape facing government contractors as they approach the January 18 deadline previously in place for compliance with the vaccine mandate. For example, in response to last week’s order by the Eastern District of Kentucky, Defense Pricing and Contracting issued guidance instructing contracting officers to not include the clause requiring compliance with Task Force guidance in new solicitations, contracts, or orders, including extensions or renewals, that may be performed at least in part in Kentucky, Ohio, and/or Tennessee. This guidance is likely to be updated following Judge Baker’s order issued yesterday. Note also that, particularly with enforcement of the OSHA vaccine and testing Emergency Temporary Standard stayed and enforcement of the federal contractor vaccination mandate enjoined, private employers may be subject to several states’ requirements limiting employers’ ability to require COVID-19 vaccination. Jenner & Block is ready to assist our clients with navigating this increasingly complicated space.

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