

ALERT

Georgia Federal Court Issues Nationwide Injunction of Federal Contractor Vaccine Mandate

December 7, 2021

WHAT: On December 7, 2021, a Georgia federal court issued a nationwide preliminary injunction against the “vaccine mandate” for federal contractors (the central obligation under President Biden’s Executive Order [EO] 14042). The judge agreed that the plaintiffs, several states along with an intervening industry group, were likely to succeed in their claim that the “President exceeded the authorization given to him by Congress through the Federal Property and Administrative Services Act when issuing Executive Order 14042.”

The Georgia Court’s opinion and order follows last week’s decision from a Kentucky federal court that halted the vaccine mandate for contracts in Kentucky, Ohio, and Tennessee only. In the Georgia case, the Court was persuaded to extend the scope of the preliminary injunction beyond the plaintiff states based on the intervention of a trade association “with members all over the country[,]” and the resulting order is clear on its application nationwide:

Accordingly, the Court ORDERS that Defendants are ENJOINED, during the pendency of this action or until further order of this Court, 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.

The case is *The State of Georgia et al. v. Biden et al.*, 1:21-cv-163, and it is currently pending in the U.S. District Court for the Southern District of Georgia.

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IMPACT ON INDUSTRY: As we mentioned in an alert about the Kentucky Court's decision to grant a preliminary injunction last week, a preliminary injunction is not a dispositive finding on the substance of a case, and the parties will now begin briefing and arguments to determine whether the Georgia court will issue an order permanently enjoining the federal government from enforcing the vaccine mandate.

In the meantime, employers should be alert for guidance from federal agencies and contracting officers concerning the implementation and enforcement of the vaccine mandate and consult with counsel on appropriate steps to take concerning employer vaccination policies. The Government's approach to following the Kentucky court's narrower injunction may be informative here. The Office of Management and Budget, as reflected in directives such as an updated U.S. Department of Defense class deviation, directed agencies to halt the application of the EO 14042 FAR (or DFARS) clause to solicitations and contracts that could be performed in whole or in part of the three affected states. If the Government follows that path with this new nationwide injunction, the result may be that agencies cease efforts to insert clauses or enforce clauses already incorporated into any federal contracts. Wiley will continue to monitor for these developments.

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