

Nationwide Injunction on COVID-19 Vaccine for Federal Contractors Applies to Vaccine Requirement Only

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The federal court that issued a nationwide injunction of Executive Order (EO) 14042, “Ensuring Adequate COVID Safety Protocols for Federal Contractors,” has issued a new Order stating that it enjoined only the vaccine requirement of the EO’s implementing tool: the Safer Federal Taskforce (Safer Taskforce) Guidance. As a result of this Order, federal contractors covered by the EO should dust off their compliance plans to meet the many non-vaccine requirements of the Safer Taskforce Guidance, though action by other federal courts considering preliminary injunctions of the EO may put all of the requirements back on hold.

Background

On December 7, 2021, a Georgia federal district court judge issued [apreliminary nationwide injunction](#) halting enforcement of the EO. [Georgia v. Biden](#). EO 14042 requires federal contractors and subcontractors with certain covered contracts to ensure their covered employees are fully vaccinated against COVID-19 by January 18, 2022, among other requirements. The case is on appeal to the U.S. Court of Appeals for the 11th Circuit. No decision is expected until after oral argument in the case, which is scheduled for April 4, 2022.

The Biden Administration took the position (through OMB guidance to federal agencies, an explanation on the Safer Taskforce website, as well as contracting agency directives to contractors) that the whole of EO 14042 and the Safer Taskforce Guidance implementing the EO was enjoined and, therefore, unenforceable pending further action in the federal courts. In a motion to the trial court, however, the Biden Administration asked the court to clarify the scope of the injunctive order, asking whether the order enjoined all of the Safer Taskforce Guidance or just the vaccination requirement.

The trial court issued an [Order](#) on January 21, 2022, explaining that the injunction enjoined the vaccine requirement only and did not address the other provisions of the Safer Taskforce Guidance, which includes masking, physical distancing, travel, quarantine, and other workplace safety provisions (including the requirement that federal contractors covered by EO 14042 designate a coordinator to oversee compliance with these requirements).

The Safer Taskforce has not yet changed its website information with respect to enforcement, but that action could happen at any time.

Implications

Of course, other federal courts have enjoined EO 14042, but only in certain states (*Florida v. Nelson* (M.D. Fla.) (Florida), *Kentucky v. Biden* (Kentucky, Ohio, and Tennessee), *Missouri v. Biden* (E.D. Mo.) (Missouri, Nebraska, Alaska, Arkansas, Iowa, Montana, New Hampshire,

North Dakota, South Dakota, and Wyoming)) and there may now be uncertainty as to exactly what provisions and requirements have been enjoined. In addition, other federal courts (for example, *Feds for Medical Freedom v. Biden* (S.D. Tex.) and *Hollis v. Biden* (N.D. Miss.)) with pending lawsuits challenging the EO have stayed those cases or denied motions for preliminary injunctions based on the *Georgia v. Biden* nationwide injunction. Plaintiffs in those actions may petition the courts for injunctive relief of all of the Safer Taskforce Guidance requirements now that it is clear only the vaccine requirement is enjoined nationwide. For now, we may be left with a patchwork of decisions, and it is unclear whether or by what means federal contracting agencies may enforce the non-vaccination requirements of the Safer Taskforce Guidance in covered contracts.

Bottom line: Covered federal contractors should follow all of the Safer Taskforce Guidance requirements, except for the vaccine requirement (unless they are doing so on a voluntary basis or because they are covered by another federal, state or local vaccine mandate), unless they are only in a jurisdiction in which the EO Safer Taskforce Guidance has been stayed in entirety by the courts.

Please contact a Jackson Lewis attorney with any questions.

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