

Kentucky Court Enjoins Enforcement of Biden's Executive Order 14042 Mandating COVID Vaccine for Federal Contractors

Insights for Employers Alert | 3 min read

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On November 30, 2021, a United States District Court in Kentucky enjoined the enforcement of President Biden's September 9, 2021, Executive Order 14042, mandating the COVID vaccine for federal contractors. As a result of the Kentucky decision, the government is enjoined from enforcing the vaccine mandate for federal contractors and subcontractors in Kentucky, Ohio, and Tennessee, the three states that challenged the order. The court ruled that the Executive Order exceeded the President's authority over government procurement and that the health issue the vaccine mandate sought to address was not sufficiently related to the government's interest in procuring goods and services.

This is yet another judicial setback to the federal government's vaccination initiatives. The government has sought to impose mandates for federal government workers, federal contractor workplaces, health care providers receiving Medicare and Medicaid reimbursement, and large employers through OSHA workplace safety emergency standards. One by one, courts are now enjoining the implementation of these efforts. For instance, the OSHA rule [has been temporarily stayed](#), as has [the CMS mandate](#). The Kentucky court decision leaves an open question as to whether the Executive Order will remain in place for the rest of the country. As of today, the answer is "yes," but more legal challenges are pending. Best practices for federal contractors are to plan for implementation of Executive Order until a decision is made by a court in your jurisdiction. That means contractors should develop plans to vaccinate their workforce, design safe workspaces for those who cannot be vaccinated, and provide notice to subcontractors. These plans should be in place by January 4, 2022, with a workforce that is fully vaccinated or properly exempt from vaccinations by January 18, 2022.

December 7 Update: On December 7, 2021, the United States District Court for the Southern District of Georgia issued a nationwide injunction prohibiting enforcement of Executive Order 14042. Seven states and the University of Georgia originally brought the action, and the Associated Builders and Contractors of Georgia, Inc., a large association of building contractors, intervened in the action. The Plaintiffs sought declaratory and injunctive relief against the implementation of the Executive Order and its enforcement. The Plaintiffs argued, and the court agreed, that the President exceeded presidential powers granted to him in the Federal Property and

Administrative Services Act (also called the “Procurement Act”). While the court was sensitive to the ends desired (vaccination against the spread of COVID-19), it held that it needed to adhere to the rule of law. Controlling precedent supported the finding the President exceeded his authority to mandate vaccinations under the guise of controlling federal procurement and contracting.

As of this writing, nationwide vaccine mandates such as the ones issued by OSHA for large employers and for health care providers that receive Medicaid or Medicare, have been temporarily enjoined. Perhaps recognizing that federal mandates are failing, and may continue to fail, other governmental agencies are filling the void. For instance, the City of Chicago issued its own mandate for its workforce earlier this fall. The City is currently negotiating with unions over the implementation of this municipal mandate. On December 6, 2021, Mayor Bill de Blasio issued a mandate for all private employers in New York City that requires all employees to have at least one dose of the vaccine by December 27, 2021. While Mr. de Blasio leaves office next month, it is possible that his successor will keep in place some or all components of the mandate. New York City will be issuing additional guidance on its mandate next week.

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Linda K. Horras

Of Counsel

📞 312-704-3022

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