



Federal Contractor Vaccine Mandate Now Blocked Nationwide: A Playbook for Federal Contractors and Subcontractors

Insights

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“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.” With these words, a federal court in Georgia granted an injunction that blocks the federal government from enforcing the federal contractor mandate, which aimed to require covered contractors and subcontractors to mandate COVID-19 vaccinations (among other things) by January 18, 2022. What do federal contractors need to know about yesterday’s ruling – and what should you be doing now that you are stuck in litigation limbo? This Insight reviews today’s court decision and presents you with a playbook for proceeding in the coming weeks.

The Basics About the Vaccine Mandate

Executive Order (EO) 14042, commonly called the “federal contractor vaccine mandate,” seeks to require federal contractors and subcontractors with covered contracts to:

- require vaccination of their employees, unless they are exempt due to a medical condition, disability, or a sincerely held religious belief, practice, or observance;
- comply with masking and social distancing in covered contractor workplaces; and
- designate a COVID-19 workplace safety officer at covered contractor workplaces.

[You can read a full summary of the mandate’s requirements here.](#)

First Shots Fired

On November 30, this same mandate was blocked by another court order from a federal court in Kentucky. That decision, however, only covered employers in Kentucky, Ohio, and Tennessee. Most observers felt it was just a matter of time before the same reasoning applied in the Kentucky case was used to justify a broader blockade. Sure enough, with today’s decision from Georgia, the mandate is blocked in nationwide until further notice.

The Court’s Decision

The lawsuit that led to the court action was originally filed by seven states (Georgia, Alabama, Idaho, Kansas, South Carolina, Utah and West Virginia) and various state agencies. Importantly, Associated Builders and Contractors, Inc. (ABC) filed a Motion to Intervene and filed its own Motion for Preliminary Injunction to stay EO 14042.

The Georgia court's 28-page opinion quoted with approval the Kentucky case decided last week, saying that "this case is not about whether vaccines are effective. They are." Stating that the most important legal component required to decide an injunction is the likelihood of success on the merits, the court found: "In this case, Plaintiffs will likely succeed in their claim that the President exceeded the authorization given to him by Congress through the Federal Property and Administrative Services Act [FPASA] when issuing Executive Order 14042." This finding echoes the decision in the Kentucky case, which also found tenuous the connection between the FPASA and the vaccine mandate in the EO.

Unlike the Kentucky court's decision which limited its holding to the three states, the Georgia decision bans the EO on a nationwide basis. The presence of the ABC in the Georgia case appears to be primary basis for the expanded stay. The court noted that all of ABC's nationwide members would not have injunctive relief if the court limited its holding to the plaintiff states: "given the breadth of ABC's membership, the number of contracts Plaintiffs will be involved with, and the fact that EO 14042 applies to subcontractors and others, limiting the relief to only those before the Court would prove unwieldy and would only cause more confusion."

Where Does This Leave Federal Contractors and Subcontractors?

Any employer covered by the federal contractor mandate in any location across the country has been granted a temporary reprieve. The problem is that we do not know how "temporary" this reprieve will be, and how soon you may need to ramp up your compliance efforts if new life is breathed into the EO.

Additionally, it is important to keep in mind the various state or local restrictions or requirements that may apply to your workforce, including vaccine mandate restrictions, masking, social distancing and other requirements.

Therefore, you may want to take a cautious approach and perform some behind-the-scenes actions to prepare for a possible resurrected contractor vaccine mandate without unfurling major initiatives. Some steps to consider include

- Establish a compliant written policy on vaccines and determine how you will enforce it should the EO come back on line.
- Plan for how to handle temporary and long-term employee loss.
- Provide information to employees on vaccines and their safety and effectiveness.

- Determine “how” to explain the pending court litigation and pending appeal(s), because many employees may assume that the EO rule is dead if they just glanced at headlines.
- Build a process (committee, outside providers, etc.) to evaluate requests for medical and religious accommodations.
- Recognize Collective Bargaining obligations if you are unionized.

What's Next?

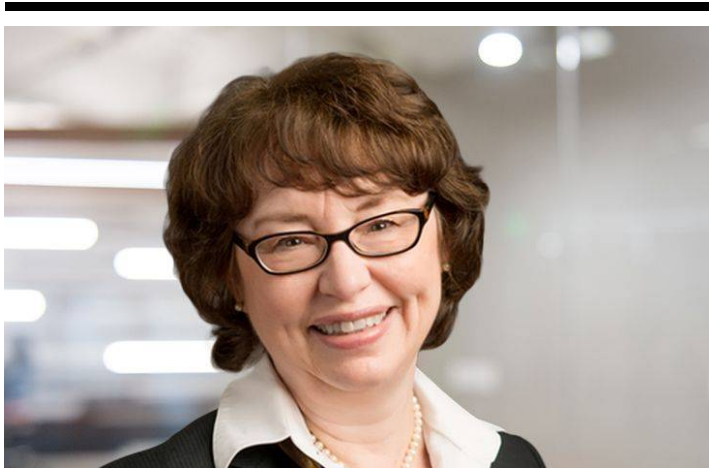
This decision was issued by a single federal court judge in Georgia, and could be overturned at any moment – perhaps putting you back on track to comply with the mandate by January 18, 2022. For this reason, you need to monitor this litigation, and the best way to stay on top of these developments is to subscribe to Fisher Phillips' Insight system.

What happens next is anyone's guess. As noted above, we could see a federal appeals court weigh in to overturn these preliminary injunctions at any moment. Given the possibility for varied rulings in different areas of the country, we could see the Multidistrict Litigation Panel once again be called upon to assign this controversy to one federal appeals court for an overall ruling as happened several weeks ago with OSHA's mandate-or-test ETS. And, of course, a trip to the Supreme Court for an ultimate decision is not out of the question.

Conclusion

As always, we will continue to monitor the situation regarding federal contractors' vaccine mandates and provide updates as warranted. Make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our Vaccine Resource Center for Employers or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our FP Vaccine Subcommittee or our Affirmative Action and Federal Contract Compliance Practice Group.

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