

Contractor Vaccine Mandate Blocked Nationwide

Government Contractor Compliance & Regulatory Compliance on **December 7, 2021**

UPDATE: On December 9, attorneys for the Justice Department appealed the nationwide injunction to the Eleventh Circuit. We will continue to provide updates as the situation develops.

On December 7, 2021, a federal judge issued a nationwide preliminary injunction halting enforcement of the federal contractor and subcontractor vaccine mandate requirements [issued](#) by the Safer Federal Workforce Task Force in response to [President Biden's Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). The mandate requires covered contractor employees to be fully vaccinated by [January 18, 2022](#). On November 30, a federal judge in Kentucky blocked enforcement of the mandate in Kentucky, Ohio, and Tennessee. We blogged about that decision [here](#).

Judge R. Stan Baker's decision came in a case originally filed by Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, and West Virginia, the governors of several of those states, and various state agencies, including the Board of Regents of the University System of Georgia. Later, the Associate Builders and Contractors, Inc. ("ABC"), a trade organization, and one of its chapters in Georgia filed a Motion to Intervene along with their own Motion for Preliminary Injunction. Judge Baker denied the Motion to Intervene as to the local chapter, but granted the Motion to Intervene as to ABC. As discussed below, the Judge then found that the inclusion of this additional plaintiff warranted issuing a nationwide injunction (as opposed to the Kentucky judge's more limited Order).

As in the Kentucky case, Judge Baker found the Plaintiffs would likely be able to show that the mandate exceeds the President's powers under the Federal Property and Administrative Services Act. He declined to issue a decision as to whether the mandate likely violated the constitutional non-delegation doctrine or infringed on rights reserved to the states under the Tenth Amendment.

As to why the Court here issued a nationwide injunction, Judge Baker cited the inclusion of ABC, contending that the trade association had members “all over the country” and were awarded “57% of federal contracts exceeding \$25 million during fiscal years 2009-2020.” His injunction does not appear to apply to other aspects of the contractor COVID-19 requirements issued by the Task Force, including those related to masking and social distancing.

It is unclear whether the federal government will seek to have the injunction lifted, and whether such an effort will be successful. But, effective immediately, covered contractors in any state or territory of the United States of America are no longer mandated to require their covered workers to be vaccinated.

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