

Client Alert

Georgia District Court Addresses Scope of Nationwide Injunction of Federal Contractor Vaccine Mandate

January 28, 2022

On January 21, 2022, the District Court for the Southern District of Georgia issued an Order in *Georgia v. Biden*, No. 2:21-cv-163 (S.D. Ga. Jan. 21, 2022), which responded, in part, to the Government's requests for clarification regarding the scope of the court's nationwide injunction of the federal contractor vaccine mandate promulgated under Executive Order 14042. The Government sought clarification of two questions: (1) Whether the injunction "prohibit[s] private federal contractors from mutually agreeing with Defendants to include COVID-19 safety clauses in their federal contracts, thus allowing those federal contractors to voluntarily comply with the Task Force guidelines, including requiring their employees to be vaccinated"; and (2) Whether the Government could continue enforcing compliance with the other requirements associated with the mandate, including masking, social-distancing, and the requirement that contractors must designate employees to serve as coordinators who manage contractor compliance efforts.

The court declined to "wade into the murky waters presented by Defendant's first inquiry, which is more akin to a request for an advisory opinion." In response to the second question, the court declined to provide clarification, again, but pointed out that the injunction "did not use" language referencing the enforcement of other requirements.

Given that the Safer Federal Workforce Task Force promulgates the COVID-safety requirements, "covered contractors" whose contracts have already incorporated one of the compliance-mandating clauses (*e.g.*, FAR 52.223-99, DFARS 252.223-7999) should closely monitor the [Task Force website](#) for any updates to its enforcement policy or the COVID-safety requirements. The Task Force's latest announcement regarding enforcement provided that "[t]he Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order." As of the date of this publication, the Task Force website continued to list all 50 States, the District of Columbia, and all outlying territories as excluded from enforcement.

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