

Contractor Vaccine Mandate Blocked In 3 States By Federal Judge

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On November 30, 2021, a federal judge issued a 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](#). Our prior postings on the contractor mandate can be found [here](#).

Judge Gregory F. Van Tatenhove's decision came in a case filed by Kentucky, Ohio, Tennessee, and Sheriffs from two Counties in Ohio, in their official capacities, in the U.S. District Court for the Eastern District of Kentucky, one of more than a dozen challenges currently pending before federal courts. Here, Judge Van Tatenhove found that President Biden likely exceeded his authority under the Federal Property and Administrative Services Act. Specifically, the Judge expressed concern that allowing the mandate to stand would: (1) limit competition in the procurement process; (2) violate the constitutional nondelegation doctrine; and (3) infringe on rights reserved for the states under the Tenth Amendment. As a result, Judge Van Tatenhove halted enforcement of the vaccine mandate for federal contractors and subcontractors in all covered contracts in Kentucky, Ohio, and Tennessee. He appears to have left other aspects of the COVID-19 requirements, such as masking and social distancing guidelines, in effect.

Accordingly, for the time being, covered contractors are no longer mandated to require their covered workers in Kentucky, Ohio, and Tennessee to be vaccinated. And while the preliminary injunction issued in *Commonwealth of Kentucky, et al. v. Joseph R. Biden, et al.* only applies to covered contracts in Kentucky, Ohio, and Tennessee, 20 other states are currently challenging the mandate in several jurisdictions and non-state parties have brought additional claims – meaning all covered contractors should be watching closely to see whether similar injunctions are issued in states where they have covered workers.

It is unclear whether the federal government will seek to have the injunction lifted, and whether such an effort will be successful. What is clear is that the legal process will continue for some time, leaving contractors in a state of limbo as they assess what their compliance obligations are now and prepare to adjust as those obligations change.

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