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Task Force and OMB Issue New Guidance on Federal Contractor Vaccine Mandate

Government Contractor Compliance & Regulatory Update on **November 7, 2022**

As federal contractors are aware, 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 (the "Task Force") in response to President Biden's Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. Our summaries of the ruling and the federal contractor vaccine mandate are available here and here. After the nationwide injunction was issued, the Task Force suspended its enforcement of Executive Order 14042's vaccine mandate. However, as we previously reported, on August 26, 2022, the Eleventh Circuit upheld the injunction as it pertained to the plaintiffs, but determined the lower court erred in issuing a nationwide injunction barring enforcement of the vaccine mandate against all federal contractors and lifted that portion of the injunction. The Eleventh Circuit's decision went into effect when it issued its mandate on October 18, 2022.

In anticipation of and following the Eleventh Circuit's ruling taking effect, the Task Force published two updates for federal contractors related to the vaccine mandate and the impact of the Eleventh Circuit's decision. On October 14, 2022, the Task Force announced its three-step plan for addressing the narrowing of the injunction:

First, OMB planned to "provide an initial notification to agencies to ensure that they comply with applicable injunctions, including as it relates to any inclusion of a contract clause implementing requirements of Executive Order 14042 in solicitations and new contracts."

Second, after issuing the notification, “the Task Force intends to update its guidance regarding COVID-19 safety protocols for covered contractor and subcontractor workplace locations. The Task Force will include in its updated guidance a timeline for implementation by contractors and subcontractors. The Director of OMB will also review the updated Task Force guidance and make a determination regarding whether the new guidance promotes economy and efficiency in Federal contracting. Such a determination would be published in the Federal Register, pursuant to Executive Order 14042.”

Third, the “OMB will provide guidance to agencies on timing and considerations for the provision of written notice from agencies to contractors regarding enforcement of contract clauses implementing requirements of Executive Order 14042, except as barred by any applicable injunctions. Such guidance from OMB will not be issued prior to the updated Task Force guidance.”

As OMB advised, “[u]ntil all three of these steps are taken, OMB advises Federal agencies that they should not take any action to enforce any requirement that covered contractors comply with the COVID-19 safety protocols” issued by the Task Force.

On October 19, 2022 the OMB completed step one of its plan, issuing additional guidance to agencies on enforcement of Executive Order 14042. The guidance explains that “to allow time to develop advice and processes for meeting agencies’ obligations under Executive Order 14042 and applicable court orders” agencies should not “(1) take any steps to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or (2) enforce any contract clauses implementing Executive Order 14042.”

Federal contractors should note that the OMB’s current halt on enforcement applies specifically to the federal contractor vaccine mandate and does not implicate the Task Force’s existing guidance for COVID-19 workplace safety protocols with respect to mask wearing for on-site and/or on-duty federal contractors under Executive Order 13991.

We will continue to monitor developments and report on them here.

View original.

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