

Federal Vaccination Mandate Enjoined Nationwide

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Jef Fagan, NECA General Counsel

On Tuesday, December 7, 2021, the United States District Court for the Southern District of Georgia enjoined the federal vaccination mandate **nationwide**. The Court enjoined the president, the Safer Federal Workforce Task Force, and 18 executive agencies and departments from enforcing the vaccine mandate anywhere in the country. This decision from Georgia comes on the heels of an earlier U.S. District Court for the Eastern District of Kentucky ruling granting a preliminary injunction to block enforcement of E.O. 14042 in all covered contracts in Kentucky, Ohio, and Tennessee.

Specifically, the Court ordered 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.” While this is not a final order on the merits, the ruling is the latest significant blow to the Biden Administration’s vaccination mandate efforts. In granting the preliminary injunction, the Court concluded that each of the four requirements were met: (1) a substantial likelihood of ultimate success on the merits; (2) an injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm of the injunction; and (4) the injunction would not be adverse to the public interest.

In determining that the movants have a substantial likelihood of ultimate success on the merits, the Court stated that it was unconvinced that the government had the authority under the Procurement Act to issue E.O. 14042, because there was not enough of a nexus between the vaccine mandate and the purposes of promoting efficiency and economy in public procurement.

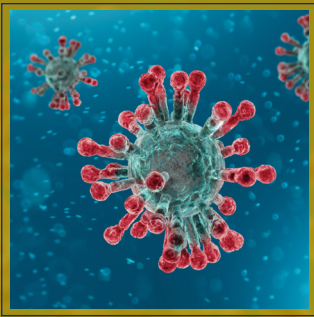
Importantly, the Court further determined that the plaintiffs established that the time, effort and expense of complying with E.O. 14042, both in the past and prospectively, constitutes **irreparable harm**. The Court cited examples of irreparable harm, such as, the burden to identify employees covered by the mandate, implement a process to ensure covered employees are fully vaccinated or have been granted a legal exemption, and require subcontractor employees working on the contract to comply with its requirements, and the Court also noted that “complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance.”

The Court further held the balancing of harms weighed in favor of an injunction because employers are still free to encourage their employees to get vaccinated and employees are still free to choose to be vaccinated, but with a preliminary injunction in place, the plaintiffs will not be required to significantly alter their ability to perform federal contract work, which is critical to their operations. In essence, the Court favored common sense and private decision-making over a government mandate on health and welfare that would significantly impact the economy when balancing harms.

Lastly, the Court stated that the public interest weighed in favor of the injunction because the mere promise of a mandatory vaccination policy has threatened the economy with upheaval.



1201 Pennsylvania Ave. NW
Suite 1200
Washington, DC 20004
202-991-6300 • www.necanet.org



In extending the injunction nationwide, while the Court recognized that the original plaintiffs are only in Georgia, Alabama, Idaho, Kansas, South Carolina, Utah and West Virginia, it found that because it had permitted a **trade organization** with members all over the country to intervene as a plaintiff, a nationwide injunction was required in order to protect all of the members of that organization. Therefore, the court granted the first nationwide injunction on the federal contractor mandate under E.O. 14042.

Moving forward, pending further action by the courts, the vaccine mandate for covered federal contractors and subcontractors may not be enforced anywhere in the nation. The FAR Deviation Clause incorporated into federal contracts and subcontracts is not void, but it may not be enforced pending resolution of the legal issues. As a result, federal contractors and subcontractors are not currently required to take action to comply with the January 18, 2022, deadline by which all covered employees were to be fully vaccinated.

Employers and chapters still need to be cognizant of state laws and owner mandates that are voluntarily imposed in states that have not prohibited mandates. In addition, other provisions of the federal contractor safety mandates such as masking and social distancing are likely not impacted by the injunction.

The federal government is likely to appeal the Court's order to the 11th Circuit. NECA will continue to monitor developments.

As with most of the COVID-19 legislation and regulation, additional guidance is likely forthcoming. NECA will update its resources as necessary. Please seek competent legal advice for assistance with any specific factual scenarios.

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