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Federal Government Now Enjoined from Enforcing the Vaccine Mandate Against Federal Contractors and Subcontractors Nationwide

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Resource Center page and/or your email for updates.

It is another week, and there is another ruling on vaccine mandates. This week, the Southern District of Georgia has taken the baton from the Eastern District of Kentucky, who just days ago enjoined the U.S. Government from enforcing the vaccine mandate against federal contractors and subcontractors in Kentucky, Ohio, and Tennessee (which we discuss here), and applied the injunction nationwide. Federal contractors and subcontractors that have spent the fall sorting through the continuously evolving Safer Federal Workforce Task Force Guidance implementing President Biden's Executive Order 14042 on Ensuring Adequate COVID Safety Protocols for Federal Contractors (summarized here), can now take a breather from the Government enforcing the vaccine mandate against you or your subcontractors.

The decision issuing the nationwide injunction focuses on the President's authority under the Federal Property and Administrative Services Act. The President expressly relied on such Act for his authority to issue Executive Order 14042 "in order to promote economy and efficiency in procurement by contracting with source that provide adequate COVID-19 safeguards for their workforce." The Southern District of Georgia found however that "the direct impact of EO 14042 goes beyond the administration and management of procurement and contracting; in its practical application (requiring a significant number of individuals across the country working in a broad range of positions and in numerous different industries to be vaccinated or face a serious risk of losing their job), it operates as a regulation of public health." The Court held that such a regulation of public health is not authorized under the Federal Property and Administrative Services Act. The Court noted that even with the injunction in place, contractors are still free to encourage their employees to get vaccinated and employees are still free to choose to be vaccinated.

Following the Eastern District of Kentucky's injunction, our clients have already experienced a willingness by prime contractors to not require the vaccine mandate clause to flow down and have heard that agencies are not enforcing the vaccine mandate. With this new injunction, we expect a broader application of this willingness to move forward without the required contract clause.

However, we expect the Administration to request reconsideration (as the Government has already done with the Kentucky decision) or appeal both injunctions, which may possibly overturn the current reprieve. For now, federal contractors and subcontractors have received an early holiday present, which may be subject to a return policy upon appeal.

We will continue to monitor these issues but if you have any questions about how this decision may impact your business, please reach out to one of the authors or your regular Kilpatrick Townsend contact.