

Federal Contractor Vaccine Mandate Blocked Nationwide

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On December 7, 2021, a U.S. District Judge temporarily blocked—nationwide—implementation of the Administration’s “federal contractor and subcontractor vaccination mandate,” a mandate which would have required that all employees of an employer with a “covered contract” be vaccinated against COVID-19 no later than January 8, 2022. As a result, as of the date of this article, no employer in the United States is bound by that mandate. But that could change.

We recently reported on the issuance of a stay blocking the same federal contractor mandate in three states—Kentucky, Ohio, and Tennessee. But here, Judge R. Stan Baker of the U.S. District Court for the Southern District of Georgia went a step further and enjoined the federal contractor mandate nationwide. In doing so, the Court stated: “The Court ORDERS 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.”

The Court cited, with approval, Judge Van Tatenhove’s Nov. 30 opinion blocking the same mandate in three states. While Judge Baker noted and acknowledged that vaccinations are effective, he was clear that that was not the question before the Court. Ultimately, in issuing the nationwide preliminary injunction, he determined that the “Plaintiffs will likely succeed on their claim that [President Biden] exceeded the authorization given to him by Congress through the Federal Property and Administrative Services Act” when it issued the mandate. That Act governs federal procurement and generally gives the President broad authority over the same.

While this court decision temporarily blocks implementation of the federal contractor mandate against any entity in the United States, it is still important for employers to determine whether the mandate would or could apply to them. This is because uncertainty for employers remains—particularly regarding whether this injunction blocking the mandate will stay in place. In other words, even though this ruling halts the federal contractor

mandate for now, the ruling could be reversed on appeal. Employers should be prepared for the fact that despite issuance of the nationwide preliminary injunction, an appeals court could reinstate the mandate at any time.

Nexsen Pruet's Employment and Labor Law Team continues to evaluate and closely monitor all developments surrounding the COVID-19 mandates, particularly as it relates to employers and COVID-19 vaccinations. Please contact any of our Team's lawyers if you need assistance with any of these issues, or if you need guidance on how best to move forward in light of these ever-evolving developments.