

Strike Three: Georgia Federal Court Blocks Federal Contractor Vaccine Mandate Nationwide

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This Court's decision comes on the heels of the order recently issued by a federal court in Kentucky that blocked the federal contractor vaccine mandate in 3 states, which we covered in a separate blog article here . Now, given the Georgia court's ruling, that vaccine mandate is stopped nationwide. The Court reasoned, in part that, given the broad scope of the mandate itself, limiting the injunction to only certain states "would prove unwieldy and would only cause more confusion."

In its 28-page order, the Court ultimately justified its injunction based on its conclusion that the plaintiffs challenging the mandate "will likely succeed in their claim that the President exceeded the authorization given to him by Congress" in issuing the Executive Order that directed implementation and enforcement of the vaccine mandate. This is the same primary conclusion reached by the Kentucky court.

In its decision, the Court notably addressed, and distinguished, the Eleventh Circuit's decision from the day before, which had affirmed that President Biden *did* have the authority to require vaccine mandates in the healthcare industry through CMS. In this regard, the Georgia Court stated: "[p]ut simply, the authorizing statute in the [Eleventh Circuit] case authorized the [President] to implement a health and safety measure while the relied upon statute, in this case, does not."

Beyond this reasoning, the Georgia court generally refrained from addressing or expressing an opinion on the merits of other arguments against the federal contractor vaccine mandate, such as whether the government followed proper administrative procedure and whether the mandate is unconstitutional for intruding upon state sovereignty. Nonetheless, the Georgia court did add that it was "worth noting that other Courts have either expressed agreement with or at least concern about these arguments," citing the Fifth Circuit's and Kentucky court's recent decisions.

The Court also concluded that plaintiffs made an adequate showing of irreparable harm, primarily based upon their argument that federal contractors' multifaceted efforts to comply with the mandate have resulted, and will continue to result, in "nonrecoverable compliance" costs: "[n]ot only must Plaintiffs ensure that their own employees satisfy the mandate, but they also must require any subcontractors' employees working on or in connection with a covered contract are in compliance."

The Court explained that such irreparable harm involves adverse financial *and* business effects in the form of lost or suspended employees, nonrecoverable costs associated with ongoing monitoring and compliance efforts, and the diversion of resources needed to do so.

Finally, the Court concluded the public interest weighs in favor of an injunction, in that it does "nothing more than maintain the status quo," as compared to forcing federal contractors and subcontractors to engage in a wide variety of "life-altering" changes that could, among other things, "imperil the[ir] financial viability" and result in the loss of jobs or employees.

This decision should provide some temporary relief to federal contractors who have been understandably concerned about how to ensure compliance with all requirements of this new mandate, which broadly apply and trickle down to all subcontractors as well. Nonetheless, if you are a federal contractor, it remains in your best interest to actively monitor developments in this space, as this injunction could be lifted or reversed in the near future.

In sum, be sure to stay in touch with a member of our Labor & Employment Team at Sandberg Phoenix to make sure you stay on top of these developments and are well-positioned to move forward with your projects regardless of what happens in the coming weeks and months.