

# CLIENT ALERTS

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## Federal Judge Blocks Vaccine Mandate For Federal Contractors

12.1.2021

On November 30, 2021, U.S. District Judge Gregory F. Van Tatenhove granted a request for a preliminary injunction regarding President Biden's vaccine mandate for federal contractors. The case is *Commonwealth of Kentucky et al. v. Biden et al.*, case number 3:21-cv-00055, in the U.S. District Court for the Eastern District of Kentucky. As a result of the preliminary injunction, the government may not enforce the vaccine mandate for federal contractors and subcontractors in Kentucky, Ohio, and Tennessee.

Given the number of vaccine mandates in the news lately, it is easy to get them confused. This preliminary injunction relates to President Biden's Executive Order 14042, which required employees of covered federal contractors to obtain the second doses of the Pfizer or Moderna vaccinations or the one dose of the Johnson & Johnson vaccine by January 2022. Unlike OSHA's Emergency Temporary Standard for private sector employers,<sup>[1]</sup> the vaccine mandate for federal contractors did not permit weekly testing as an alternative to vaccination. Instead, Executive Order 14042 and subsequent guidance from the Safer Federal Workforce Task Force required employees of certain federal contractors and subcontractors to be fully vaccinated by January 18, 2022, absent a religious or medical exemption. The mandate had broad implications applying to federal contractors and subcontractors that performed at least partial work within the United States on a "covered contract." A covered contract included contracts: (1) for services, construction or a leasehold interest in real property; (2) for services covered by the Service Contract Act; (3) for concessions; or (4) entered into with the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public. The mandate also required covered employees and site visitors to follow CDC guidance for masking and social distancing.

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Again, this preliminary injunction only applies to federal contractors and subcontractors in Kentucky, Ohio, and Tennessee. Federal contractors and subcontractors in other states, including Michigan, should continue preparing for the January deadline. However, Judge Van Tatenhove's Order may be persuasive for other Courts considering the issue. Judge Van Tatenhove's Order states:

This is not a case about whether vaccines are effective. They are. Nor is this a case about whether the government, at some level, and in some circumstances, can require citizens to obtain vaccines. It can. The question presented here is narrow. Can the president use congressionally delegated authority to manage the federal procurement of goods and services to impose vaccines on the employees of federal contractors and subcontractors? In all likelihood, the answer to that question is no.

There is certain to be additional litigation over the federal contractor mandate in the coming weeks. Butzel will continue monitoring the situation closely. If you have any questions about the status of the federal contractor mandate or any other Labor & Employment issue, please contact your Butzel Labor & Employment Attorney.

**Brett Miller**

313.225.5316  
millerbr@butzel.com

**Blake Padget**

248.258.1305  
padget@butzel.com

[1] The vaccine requirement for federal contractors is separate from the Emergency Temporary Standard issued by OSHA for private sector employers with more than 100 employees. Butzel Long previously published a client alert regarding an order from the 5th Circuit Court of Appeals halting implementation of OSHA's Emergency Temporary Standard.