

## Eleventh Circuit Court Upholds Stay of the Government Contractor Vaccine Mandate but Limits the Scope of its Injunction

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Since December 2021, there has been a [nationwide stay](#) in the implementation of Executive Order 14042 (EO)'s vaccination requirement for federal contractors, which was the result of an injunction entered by a Georgia federal court. On August 26, 2022, the Eleventh Circuit Court entered an [opinion](#) upholding the injunction — which halts enforcement activity of EO 14042's vaccination requirements — but limited the injunction to the parties to the suit.

In its opinion, the Eleventh Circuit concluded that the challenging plaintiffs (several states as well as a trade organization) were likely to succeed on the merits of their case challenging the Executive Order's requirements because "no statutory provision contemplates the power to implement an across-the-board vaccination mandate." The panel went on to note that there was no evidence that "Congress delegated the power to require widespread vaccination through the Procurement Act," to the executive branch, and as such, there is a substantial likelihood that the plaintiffs would succeed on the merits with respect to their claim that the President exceeded his authority by issuing the contractor vaccine mandate.

While the Eleventh Circuit Court concluded that an injunction of the government contractor vaccine mandate was warranted, the panel also limited the scope of the injunction in a potentially significant manner. The panel issued a rebuke of nationwide injunctions and cautioned that injunctions issued by district courts should be no "more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." Accordingly, the court found that a nationwide injunction was inappropriate, and the Eleventh Circuit Court limited the injunction. Specifically, the Eleventh Circuit Court held that, "[w]e therefore vacate the district court's injunction to the extent that it bars enforcement of the mandate against nonparty contractors through new and existing contracts." (emphasis added).

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However, the panel noted that the injunction permissibly blocks federal agencies from enforcing the mandate in contracts with any plaintiff State or member of the Associated Builders and Contractors. Moreover, the Eleventh Circuit held that the injunction was to remain in place for federal government solicitation in which any of the plaintiffs belong to the pool of bidders. However, the injunction no longer applies to solicitations where no plaintiff participates as a bidder.

The impact of this ruling is still unclear. The Order itself limits its injunction of the government contractor vaccine mandate to the plaintiff states — Alabama, Georgia, Idaho, Kansas, South Carolina, Utah and West Virginia — as well as members of the Associated Builders and Contractors. In separate cases, other courts have issued limited injunctions involving plaintiff States Missouri, Nebraska, Alaska, Arkansas, Iowa, Montana, New Hampshire, North Dakota, South Dakota, Wyoming (*Missouri v. Biden*); Louisiana, Mississippi, and Indiana (*Louisiana v. Biden*); Kentucky, Ohio, and Tennessee (*Kentucky v. Biden*); and Florida (*Florida v. Nelson*). While this opens the door for the potential implementation and enforcement of the contractor vaccine mandate for entities and States not covered by the current injunctions, at the time of publishing, the Safer Federal Workforce Task Force has yet to publish updated guidance [regarding the scope of vaccination requirements](#) and next steps. Moreover, the Eleventh Circuit Court's Order previewed the possibility of U.S. Supreme Court review of the current patchwork of injunctions. Employers should continue to monitor these developments going forward. Stinson's Coronavirus Task Force is closely following these developments.

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