

Federal Courts Block Biden Vaccine Mandates

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As of December 2, 2021, two out of the three vaccine mandates called for by President Biden have been blocked nationwide, and the third has been enjoined in three states. President Biden's Path Out of the Pandemic plan consists of three separate vaccine mandates. The first mandate—an executive order requiring all federal contractors to be vaccinated—has been put on hold in Kentucky, Ohio, and Tennessee. The second mandate—an Emergency Temporary Standard (ETS) issued by the Occupational Safety and Health Administration (OSHA) requiring employers with 100 or more employees to ensure full vaccination of their workforce, or require weekly testing and masking—has been blocked nationwide. The third mandate—an Interim Final Rule issued by the Centers for Medicare & Medicaid Services (CMS) requiring vaccination of Medicare and Medicaid certified providers and suppliers employees—has also been blocked nationwide.

Executive Order (Federal Contractors and Subcontractors)

On November 30, 2021, a federal judge in Kentucky issued an order enjoining President Biden's executive order in Kentucky, Ohio, and Tennessee. The preliminary injunction prevents the government "from enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in Kentucky, Ohio, and Tennessee." The preliminary injunction will remain in effect until final resolution of the case or until further order. The government will most likely appeal the order to the Sixth Circuit Court of Appeals. Executive Order 14042 mandates that federal contractors and subcontractors follow the guidance published by the Safer Federal Workforce Task Force, which requires all federal contractors to be vaccinated by January 4, 2022. The executive order applies to prime and

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subcontractors at any tier who work on covered contracts or contract-like instruments. For more information, please see our previous article addressing this mandate.

OSHA ETS (100+ Employers)

On November 12, 2021, the Fifth Circuit U.S. Court of Appeals issued an order that put a nationwide stay on the OSHA large employer vaccine mandate. The court ordered OSHA to suspend the implementation and enforcement of the mandate “until further court order.” The case will be heard before the Sixth Circuit, who will review the Fifth Circuit’s decision and either uphold or lift the stay. The OSHA mandate requires employees of all private employers with 100 or more employees to be vaccinated by January 4, 2022, or tested weekly and wear facemasks. For more information, please see our previous article addressing this mandate.

CMS Final Rule (Healthcare Workers)

On December 1, 2021, a federal judge in Louisiana issued an order enjoining the CMS mandate from going into effect nationwide. The preliminary injunction will remain in effect until final resolution of the case or until further order. CMS will likely appeal this decision. The CMS Interim Final Rule requires staff of 21 types of Medicare and Medicaid healthcare providers to be vaccinated in two phases, receiving their first dose of a two-dose vaccine, or only dose of a single-dose vaccine by December 5, 2021, and their second dose by January 4, 2022. For more information, please see our previous article addressing this mandate.

Legal challenges to these vaccine mandates have been pouring in, and there will likely be more challenges to come. Koley Jessen will continue to monitor developments regarding vaccine mandates and advise as updates become available. If you are unsure whether these orders impact your business or need assistance with any of your policies, please contact a member of Koley Jessen’s Employment or Health Law Group.