

ALERT

Employment Law

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hinklaw.com 316.267.2000

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NATIONWIDE INJUNCTION ISSUED AGAINST FEDERAL CONTRACTOR COVID-19 MANDATE

Yesterday afternoon (December 7, 2021), a federal district court in Georgia issued a nationwide preliminary injunction against Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors* (the “**Order**”). This comes on the heels of other federal courts issuing injunctions against COVID-19 rules contained in the OSHA Emergency Temporary Standard and the Centers for Medicare and Medicaid Services Interim Rule (click [here](#) for our recent Alert on this topic).

Summary of the Order

As explained in [another of our recent Alerts](#), the Order required federal contractors and subcontractors with a covered contract to conform to the following workplace safety protocols:

- COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
- Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
- Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

Summary of the Injunction

The injunction by the Georgia court applies to all 50 states and blocks the federal government from enforcing the Order (as well as the [guidance issued by the Safer Federal Workforce Task Force](#)).

We expect the federal government to appeal the preliminary injunction in short order. We do not have a prediction for what might happen on appeal. However, until and unless the preliminary injunction is lifted, the Order (including its requirement that covered employees be fully vaccinated no later January 18, 2022) cannot be enforced by the federal government.

Wichita Office
1617 N. Waterfront Parkway
Suite 400
Wichita, KS 67206
316.267.2000

Kansas City Office
Lenexa City Center – Penn I
8711 Penrose Lane
Suite 400
Lenexa, KS 66219
913.345.9205

Topeka Office
800 SW Jackson
Suite 1520
Topeka, KS 66612
316.267.2000

Steps to Consider Taking

While waiting for status of the Order to be settled by the courts, covered contractors under the Order should consider taking the following steps:

- 1) If you are a federal subcontractor, reach out to the contractor at next higher tier to find out whether it will require you to comply with the requirements of the Order. (Even though the federal government cannot enforce the Order, individual federal contractors can still require their subcontractors to follow the Order or portions of the Order.)

- 2) Continue preparing as though the Order will be enforced, including the following possible steps:
 - Appoint a COVID-19 Workplace Safety Coordinator.
 - Develop a process for reporting vaccination status and ensuring confidentiality of vaccination information, and require all employees to notify the coordinator of their vaccination status.
 - Ensure that employees and managers are aware of the process for requesting accommodations due to disabilities and sincerely held religious beliefs.
 - Prepare communications to employees and visitors regarding the requirements of the Order.
 - Prepare a mandatory COVID-19 vaccination policy that complies with the Order.

Please note that the steps above are not recommendations for action you *should* take, merely recommendations for steps you should *consider* taking.

Please do not hesitate to contact us if you have questions about the Order, the preliminary injunction, or what you should be doing while the preliminary injunction is in effect. We would be glad to help you.

James C. Spencer
jspencer@hinklaw.com
316-660-6109

Eric W. Barth
ebarth@hinklaw.com
316-660-6274

Michelle R. Stewart
mstewart@hinklaw.com
913-345-9205

Melissa A. Moodie
mmoodie@hinklaw.com
316-631-3188