Nationwide Halt on Implementation of Federal Contractor Vaccine Rule Issued (US)

Article By

Laura Lawless

Squire Patton Boggs (US) LLP
Employment Law Worldview

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On December 1, we discussed a decision issued by the Eastern District of Kentucky enjoining implementation of President Biden’s Executive Order 14042 in Kentucky, Ohio, and Tennessee, querying whether similar challenges would likewise result in injunctive relief. As we portended, on December 7, a federal judge in the Southern District of Georgia issued a broader preliminary injunction, barring implementation of the Executive Order nationwide, in State of Georgia v. Biden, Civil Action No. 1:21-cv-163 (S.D. Ga.).

Executive Order (EO) 14042 required federal contractors to ensure their employees
are vaccinated against COVID-19. Plaintiffs in *Georgia v. Biden*, which included seven states, their governors, and various state agencies, and which were later joined by a nationwide construction trade organization and one of its chapters, filed for declaratory and injunctive relief against enforcement of EO 14042. Judge Stan Baker of the Southern District of Georgia acknowledged that vaccines are effective against COVID and that the pandemic has “wrought” a “tragic toll … throughout the nation and the globe,” but concluded the President exceeded the authorization given to him by Congress through the Federal Property and Administrative Services Act (“FPASA” or the “Act”) when he issued EO 14042.

Although the FPASA grants the President broad authority to manage administrative issues involving the Government as a whole, the Court was not convinced the statute authorizes the President to implement a sweeping provision like EO 14042, one which “goes beyond the administration and management of procurement and contracting,” has broad “practical application” to operate as a public health regulation, and has “vast economic and political significance” by limiting contractors’ ability to work on federal contracts. The Court also found an insufficient nexus between the purposes of the FPASA and EO 14042. Rejecting a claim that the connection between slowing the pandemic and ensuring efficiency and economy in procurement is “self-evident,” the Court found the FPASA was not intended to give the President sweeping authority to promulgate “wide and sweeping public health regulation[s]” such as mandatory vaccination. The President’s supposition that mandatory vaccination of federal contractors “could lead to a healthier and thus more efficient workforce or it could reduce absenteeism” was too attenuated for the Court to conclude EO 14042 fell squarely within the authority delegated to him by Congress.

In addition to finding a likelihood of success on the merits in challenging the mandate, the Court was convinced of the risk of irreparable harm, including substantial administrative burdens and costs compliance with EO 14042 would impose on covered contractors. Finding that forced compliance with mandatory vaccination rules would “imperil the financial viability” of some of the petitioners and “be life altering for many of Plaintiffs’ employees as Plaintiffs would be required to decide whether an employee who refuses to be vaccinated can, in practicality, be reassigned to another office or another task or whether the employee instead must be vaccinated,” the Court had little difficulty finding a risk of irreparable harm and that the “balancing of the harms weighs heavily in favor of enjoining the enforcement of EO 14042.”

Unlike prior decisions on which we’ve reported, however, the Judge in *Georgia v. Biden* found that, “on the unique facts before it,” including that the trade organization had members nationwide and that EO 14042 applies to subcontractors in states beyond those which were parties to the action, it would be necessary, “in order to truly afford injunctive relief to the parties before it, to issue an injunction with nationwide applicability.” Therefore, at least until further notice, federal contractors and subcontractors are relieved of complying with EO 14042. We will continue to update here on anticipated appellate action challenging the determination.

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