Federal Government Confirms It Is Currently Not Enforcing Contractor COVID-19 Requirements

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Following up on two recent federal court decisions (discussed here and here) enjoining the enforcement of the contractor vaccine mandate, the Office of Management and Budget (“OMB”) has issued guidance, posted on the Safer Federal Workforce Task Force’s (“Task Force”) website, regarding the federal government’s response to those decisions.

The guidance provides that “The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”).” The guidance further states that currently Excluded States and Outlying Areas include the entire country and all of its territories, but this may
change if the injunctions are lifted or modified.

Notably, although the court orders enjoining enforcement focused solely on the vaccine mandate portion of the Task Force’s requirements issued pursuant to Executive Order 14042, OMB’s statement indicates no portion of the contractor requirements (such as the mask requirement) will be enforced.

The full text of the announcement is provided below.

**Regarding Applicable Court Orders and Injunctions**: The Office of Management and Budget has issued guidance on implementing requirements of Executive Order 14042 while ensuring compliance with applicable court orders and injunctions, including those that are preliminary and may be supplemented, modified, or vacated, depending on the course of ongoing litigation.

- **For existing contracts or contract-like instruments (hereinafter “contracts”) that contain a clause implementing requirements of Executive Order 14042**: The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area.

- **Currently Excluded States and Outlying Areas**: All of the United States and its outlying areas, including:
  - The fifty States;
  - The District of Columbia;
  - The commonwealths of Puerto Rico and the Northern Mariana Islands;
  - The territories of American Samoa, Guam, and the United States Virgin Islands; and