

## Federal Contractor COVID-19 Vaccination Requirements: Are Changes Coming?

Update

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Just over a year ago, President Biden issued an Executive Order requiring federal agencies to amend all contracts to mandate compliance with Safer Federal Workforce Task Force (the “Task Force”) guidance. The Task Force then issued guidance (the “November 2021 Guidance”) that required covered federal contractor employees be fully vaccinated for COVID-19 and comply with masking and physical distancing requirements. Among other requirements, covered contractors also had to designate COVID-19 workplace safety coordinators.

Litigation ensued and the November 2021 Guidance was enjoined from going into effect by several lawsuits. One such suit, *State of Georgia et. al v. President of the United States*, resulted in a nationwide injunction. The federal government appealed that nationwide injunction. The United States Court of Appeals for the Eleventh Circuit narrowed the injunction to cover only the seven states and construction-industry trade organization that were parties to the lawsuit. This narrowing does not affect the 17 states in which injunctions apply based on four additional lawsuits.<sup>1</sup>

In response, on October 14, 2022, the Task Force published an update notifying federal contractors that their COVID-19-related obligations may be changing.

### What’s Changing?

Beginning as early as tomorrow, October 18, 2022,<sup>2</sup> just over half of states will no longer be covered by an injunction preventing the implementation of the November 2021 Guidance. The Task Force provides this “Summary of

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Anticipated Steps” that will be taken before enforcement of the November 2021 Guidance requirements will occur:

- The Office of Management and Budget (OMB) will notify agencies that they need to continue to comply with applicable injunctions.
- The Task Force “intends to update its guidance regarding COVID-19 safety protocols,” which will include a “timeline for implementation.”
- The Director of the OMB will review any updated guidance regarding whether it promotes economy and efficiency in federal contracting.
- The OMB will issue guidance to agencies on timing and notice to contractors regarding enforcement.

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## Conclusion

There are several steps that need to occur for federal contractor requirements to change in states not covered by an injunction. Whether changes occur – leaving a patchwork of requirements for the nation’s federal contractors – remains to be seen.

However, the Safer Federal Workforce Task Force has indicated that changes may be coming. Federal contractors in states in which the injunction no longer applies should watch to see what comes next.

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1. Notably, three of these four lawsuits are currently pending a decision in the applicable United States Court of Appeals. In each case, oral arguments have been heard. The fourth case is within the Eleventh Circuit and was pending the decision in the State of Georgia case.
  2. The Task Force notes that “The Eleventh Circuit’s decision narrowing the district court’s injunction will take effect when that court issues its mandate, which is scheduled to occur on October 18[, 2022].”