

ALERT

States File Suits Challenging Federal Vaccine Mandate Under EO 14042

October 29, 2021

WHAT: Florida has filed suit against the Government, seeking declaratory, preliminary, and permanent injunctive relief against the Government's federal contractor vaccine mandate. This is a topic we have followed closely and covered extensively. See Wiley Insights on Updates to the Task Order's Guidance, Class Deviations, and Biden's Mandate. In its complaint, the state argues that the statute relied on by the Biden Administration for the vaccine mandate, the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. § 121(a), does not authorize "such a radical intrusion on the personal autonomy of American workers." Further, Florida asserts that the vaccine requirements are unlawful because they violate fundamental principles of administrative and procurement law. The complaint alleges that only the Federal Acquisition Regulation (FAR) Council has the power to issue government-wide procurement regulations and that the Safer Federal Workforce Task Force (Task Force) Guidance violates the Administrative Procedure Act, given that it fails to reflect reasoned decision-making.

WHEN: On Thursday, October 28, 2021, Florida filed suit against the United States and various federal officials and agencies responsible for the issuance and implementation of the challenged actions. The suit was filed in the U.S. District Court in the Middle District of Florida, Tampa Division.

WHAT DOES IT MEAN FOR INDUSTRY: While contractors should be aware of this litigation, it's too early to know how, or if, it will impact the vaccine mandate. Ultimately this will depend on numerous factors, such as how quickly the court schedules briefing and a hearing on the state's request for a preliminary injunction, as well as whether injunctive relief is granted. There is risk inherent in any

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vaccine mandate compliance strategy that relaxes efforts to meet the December 8 vaccination deadline and related obligations based only on the filing of a new lawsuit; there is no guarantee that this litigation will be successful and such suits take time to resolve. However, just like state executive orders and state legislation either banning vaccine mandates or limiting the scope of such mandates, this lawsuit further complicates issues surrounding compliance with the federal contractor vaccine mandate.

Nevertheless, this litigation does have the potential to impact all contractors subject to the vaccine mandate. Wiley will be monitoring this lawsuit and related state efforts closely as well as the issuance of any further vaccine mandate guidance from the Task Force.

BREAKING: Ten additional states (Missouri, Nebraska, Alaska, Arkansas, Iowa, Montana, New Hampshire, North Dakota, South Dakota, and Wyoming) filed a similar lawsuit in the U.S. District Court for the Eastern District of Missouri.

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