

Biden Vaccine Mandate Blocked

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Authors: [Adam Primm](#)

The Fifth Circuit in *Louisiana v. Biden* upheld a Louisiana federal district court in blocking President Biden's vaccine mandate on December 19, 2022, in a 2-1 decision, prohibiting the Biden administration from enforcing the mandate in Louisiana, Indiana, or Mississippi.

The Biden administration issued several COVID-19 mandates, including an Executive Order on September 9, 2021, at issue in this litigation. The Executive Order instructed that "in order to promote economy and efficiency in procurement by contracting with sources that provide adequate COVID-19 safeguards for their workplace," government contracts must include a clause specifying that the contractor and any subcontractors must comply with all guidance from the Safer Federal Workforce Task Force. Guidance from the Task Force followed, ultimately calling for all federal contractors to require their employees to be vaccinated against COVID-19 or be subject to masking and testing requirements.

Three states sued in Louisiana federal court. The district court reviewed the four factors applicable in granting a preliminary injunction - (1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest - and granted the injunction. The Biden administration appealed.

The Executive Order was issued under the Procurement Act, which gives the president authority to prescribe policies and directives necessary for establishing an economical and efficient system for federal procurement and contracting. The Fifth Circuit concluded that although questions surrounding the vaccine and the pandemic generally are undoubtedly of "vast economic and political significance," Congress has not spoken clearly to authorize such a dramatic shift in the exercise of the President's power under the Procurement Act. The court called the use of the Procurement Act to reach through an employing contractor to force obligations on individual employees "truly unprecedented" and found the states demonstrated a strong likelihood of success on the merits. The court also found that the balance of harms to the state and the public interest weighed in favor of blocking the mandate.

The Fifth Circuit is not the only court to consider the issue. In August, the Eleventh Circuit granted President Biden a limited victory when it partially overturned a nationwide injunction blocking the mandate, restricting the Biden administration's enforcement to only seven states. The Sixth and Eighth Circuits also heard oral arguments regarding the vaccine mandate after two lower courts issued preliminary injunctions blocking the mandate but have not yet issued decisions.

For more information, please contact a member of Benesch's [Labor & Employment Practice Group](#).

Adam Primm at aprimm@beneschlaw.com or 216.363.4451.