

Publications

Biden's Federal-Employee Mandate Blocked Nationwide

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Friday afternoon, January 21, 2022, yet another of the Biden administration's attempts to require COVID-19 vaccinations was blocked. Judge Jeffrey Vincent Brown of the Southern District of Texas issued a nationwide preliminary injunction blocking [Executive Order 14043](#), which required Federal agencies to implement vaccine requirements for all of their employees.

In his opinion, Judge Brown followed the approach taken by the Fifth Circuit and determined that the "Hobson's choice employees face between 'their job(s) and their jab(s)' amounts to irreparable harm." Judge Brown then addressed the two arguments raised by the Government: 1) that the President had express statutory authority to issue the directive; and 2) that the President had authority to issue the directive pursuant to his Article II powers.

The Court rejected both of the Government's arguments. Judge Brown held that the statutory authority asserted by the Government granted the President substantial powers, but not so substantial as to allow the President to "require millions of federal employees to undergo a medical procedure as a condition of their employment." As for the Article II argument, although the Court did not create a hardline rule on the scope of the President's power under Article II, it did hold that "however extensive that power is, the federal-worker mandate exceeds it."

Accordingly, the Court entered a preliminary injunction. Under the injunction, the federal government is prohibited from enforcing the vaccine mandate for federal employees in any state or territory of the United States. The Department of Justice has already indicated that it intends to appeal the Court's decision.

The Vorys COVID Task Force will provide further insights as litigation and the ultimate fate of the Executive Order plays out. In the interim, contact your Vorys lawyer if you have questions about the federal employee vaccine mandate or other COVID-related requirements or concerns.