



AGC
NEBRASKA BUILDING CHAPTER
THE CONSTRUCTION ASSOCIATION

Update: Federal Contractor Vaccine Mandate

On Aug. 26, the U.S. Court of Appeals for the 11th Circuit issued [its decision](#)—to uphold in part—a lower court case that implemented a nationwide injunction halting implementation of President Biden’s federal contractor COVID-19 vaccination mandate, [E.O. 14042](#).

Below are updates on this case and how it relates to AGC and its members.

What is the Impact of the 11th Circuit’s Decision in this Case?

The 11th Circuit upheld the preliminary injunction halting the mandate. However, the court disagreed with the injunction being applied nationwide. As a result, the 11th Circuit ruled that the preliminary injunction only applies to the plaintiffs in this particular case.

In practice, this means that the federal government is enjoined from enforcing the mandate in seven states (Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, and West Virginia), as well as for the “members” of the Associated Builders and Contractors, who intervened in the case instead of filing its own lawsuit as AGC of America did.

From a legal standpoint, it is highly unusual for a court to limit the applicability of an injunction to “members” of any particular association. It is unclear how membership in a particular association could be demonstrated to a federal agency. In addition, it complicates the court’s stated decision to narrow the geographic reach of its ruling.

The case will now go back to the lower court for arguments on the merits.

What Does this mean for AGC’s Lawsuit?

As you know, AGC of America is pursuing a [Construction Advocacy Fund](#)-backed lawsuit regarding the federal contractor vaccination mandate. In Dec. 2021, the Associated General Contractors of America and two of its chapters—the Dallas-based TEXO chapter of the association, and the statewide AGC of Texas chapter—filed a [lawsuit](#) in the U.S. District Court for the Northern District of Texas. The District Court put on hold AGC of America’s suit pending the decision from the 11th Circuit on the nationwide injunction.

The legal conclusions the 11th Circuit uses to justify its decision to uphold the injunction aligns with AGC of America’s arguments and increases our odds of prevailing in court. AGC is renewing its longstanding request for a preliminary injunction that would shield all AGC members—if not all federal contractors— from enforcement of the Administration’s broad mandate that federal contractors require COVID-19 vaccinations.

AGC of America’s lawsuit argues both that the Biden administration lacks authority to issue the mandate and that the mandate itself is contrary to long established federal procurement laws. To date, there is roughly a half dozen separate lawsuits seeking to stop the vaccination mandate from applying to federal contractors.

What can we expect from Federal Agencies and the Safer Federal Workforce Taskforce?

Federal agencies will wait for direction from the [Safer Federal Workforce Taskforce](#). President Biden created this taskforce in 2021, and it promulgates policies to implement the vaccine mandates and other COVID-19 requirements for federal agencies and direct federal contractors. Your members who are direct federal

contractors (i.e., contractors with prime or subcontracts to perform work for a federal agency like the Army Corps, General Services Administration, etc.) should be directed to that website. AGC members should check it often in the coming days.

Since the nationwide injunction, the Taskforce has recently spent time loosening COVID-19 protocols for federal employees, not federal contractors. AGC of America will continue to provide updates.

What Does this mean for AGC members that are Direct Federal Contractors?

For now, it means federal agencies cannot enforce the vaccine mandate in, at least, those seven states. Contractors currently working on a federal construction project should contact their legal counsel and Contracting Officer to ensure there are no changes to existing requirements.

It is important to note that federal agencies still retain certain authorities—separate and apart from the vaccine mandate—to require contractors to attest to vaccination status or take preventative measures in line with the CDC and other authorities. For example, the Department of Veterans Affairs can still require increased measures for work on a hospital where there are patients at risk.

AGC Resources

Although AGC of America continues to fight back against the federal contractor vaccine mandate, the association's broader efforts to support the construction industry's voluntary encouragement for the use of COVID-19 vaccines remain. AGC of America has put forth a host of construction industry-specific resources on its COVID-19 [Vaccine Toolkit webpage](#). The resources include a series of [Construction Advocacy Fund](#)-financed [public service ads](#) AGC of America created specifically targeting construction workers.

For more information, contact jordan.howard@agc.org or (703) 837-5368