



REFERENCE SHEET

# E.O. 14042

## COVID Safety Guidance

On Sept. 9, 2021, President Biden issued an Executive Order, E.O. 14042, directing certain Federal service contractors and subcontractors to implement COVID safety guidance developed by the Safer Federal Workforce Task Force (“SFWTF Guidance”). E.O. 14042 will be incorporated into those Federal contracts and contract-like instruments that are awarded, extended, or modified on or after October 15, 2021 and is a mandatory flow-down term for subcontractors performing work on the Federal contract. In addition, several Federal agencies and departments have directed their contracting officers to engage in bilateral negotiations to amend existing contracts to incorporate the SFWTF Guidance.

Generally, E.O. 14042 requires a covered Federal contractor to ensure vaccination (or qualification for reasonable accommodation from vaccination) of all employees who are: (1) performing work on the federal contract; (2) supporting the work done on the federal contract; or (3) coming into contact with employees in categories (1) and (2). If a Federal contractor’s workforce is complying with E.O. 14042, then OSHA’s COVID ETS for large employers will not apply to those employees.

The Commonwealth of Kentucky and entities in Ohio, Kentucky and Tennessee filed a case in the U.S. District Court for the Eastern District of Kentucky arguing that the President exceeded his authority by issuing E.O. 14042. On November 30, 2021, U.S. District Judge Van Tatenhove issued an opinion and order preliminarily enjoining enforcement of E.O. 14042 in Kentucky, Ohio, and Tennessee.

The government will certainly appeal the preliminary injunction and any subsequent District Court decision to the Sixth Circuit Court of Appeals. Given the current composition of active judges, the odds are slightly in favor of the injunction being upheld while the litigation proceeds. Because this is only a preliminary ruling, Federal contractors should to continue preparing contingency plans to implement the requirements of E.O. 14042, if the injunction is lifted. In addition to the Kentucky lawsuit, there are cases challenging E.O. 14042 pending in U.S. District Courts in Arizona, Florida, Georgia, Texas and Oklahoma. Eventually, the matter will be appealed to the U.S. Supreme Court, so it is unlikely that the legal issues will all be settled before the January 22nd deadline that was previously set as the date for full implementation.

Although E.O. 14042 has been preliminarily stayed, Federal agencies and employees have already implemented on-site safety protocols to prevent contractors, vendors, and visitors from bringing COVID onto Federal property. As a practical matter, Federal contractors who are performing work at a Federal worksite will therefore be asked by the Federal agency to certify that all employees who are physically on Federal property are fully vaccinated.