



FEDERAL VACCINE MANDATES PUT ON HOLD BY COURTS

In October the White House announced its strategy to end the COVID-19 pandemic which included three vaccine mandates. All of the vaccine mandates under the federal plan have been halted by various federal courts.

Federal Contractors

By executive order, the Biden Administration required all federal workers and federal contractors doing business with the Federal Government to be vaccinated. The mandate had a compliance date of January 4, 2022. On Tuesday, December 7, 2021, a judge from the Southern District of Georgia issued a preliminary injunction, which halted the mandate nationwide. Seven states, and governors and state agencies of those states, sued regarding the mandate. The Associated Builders and Contractors, Inc. intervened. The court was clear in its ruling that it did not find that the vaccines were not useful or harmful, but that it believed the President exceeded his authority in ordering the mandate.

The U.S. Government has filed a notice of appeal of the judge's order with the Eleventh Circuit Court of Appeals. The Government has also asked for an emergency stay while it appeals the order.

Employers With 100+ Employees

Also included in the White House plan was a mandate through OSHA for all employers with 100 or more employees for vaccination or weekly testing of all employees. The mandate requires that employers provide paid time off for their employees to get vaccinated, and that unvaccinated workers wear a mask in the workplace. The mandate would also apply to any public employers with one hundred or more employees in 28 states who have OSHA approved state plans, which would include Illinois.

At the end of November, the Fifth Circuit Court of Appeals issued a stay against enforcement of the OSHA mandate. That decision, as well as cases pending in several other federal circuits, were consolidated and are currently before the Sixth Circuit Court of Appeals. The Government has moved to lift the stay and is not

enforcing the mandate while the litigation is pending. That matter is fully briefed, and a decision from the 6th Circuit could come at any time.

Center For Medicare and Medicaid Services Mandate

The third vaccine mandate included in the White House plan was a requirement that all hospitals and various other medical facilities that received federal Medicare/Medicaid funding require employees to be fully vaccinated by January 4, 2022. This mandate does not include a weekly testing option for covered employees.

At the end of November, a federal district court in Missouri initially issued an injunction applicable to ten states. Also at the end of November, a federal district court in Louisiana issued a nationwide preliminary injunction against the CMS mandate.

CMS has appealed both the ten state preliminary injunction out of Missouri and the nationwide preliminary injunction to the 8th and 5th Federal Circuits of Appeals, respectively. Until the legal matters surrounding the mandate have been resolved, CMS has halted enforcement of vaccination rule.

Take Aways

It is likely that all three vaccination mandates will end up in front of the Supreme Court for decisions on their validity. And, while the enforcement of all three mandates have been stayed by the various federal agencies responsible for their implementation, such action, and the court orders themselves, do not impact a mandate that an employer, state or city government has put into place. It is important to note that such mandates or work rules taken independent of the federal rules are not impacted by the various court orders or the federal government's decision to halt implementation of the rules.

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Dated: December 20, 2021

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