

New Developments in Federal Vaccine/ Testing Mandates

12.20.2021

Over the past few days, the courts have limited or reversed earlier decisions that stayed the OSHA vaccine mandate for private employers and the CMS order for healthcare facilities.

Below is a quick snapshot of the various federal vaccine/testing mandates and their status as of **December 20, 2021**:

1. Private Employers with 100 or More Employees – OSHA Order

Status of the Order: ORDER IS REINSTATED – Previous stay lifted per order from the 6th Circuit on December 17, 2021.

Effective Date of Order: Originally, the OSHA Order was to go into full effect in early January. On December 18, 2021, OSHA issued a statement that it would not issue citations for noncompliance with any requirements of the Order before January 10 and would not issue citations for noncompliance on the testing requirements before February 9, 2022, so long as the employer is ‘exercising reasonable, good faith efforts to come in compliance with the standard.

2. Federal Employee and Federal Contractors

Status of the Order: NO CHANGE. The Order is still stayed pending an appeal.

3. Healthcare Workers and Those Working in Most Healthcare Facilities – CMS Order

Status of the Order: NATIONWIDE BAN IS LIMITED TO CERTAIN STATES

The Order **is stayed** only in the following states: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, Wyoming.

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The Order is **reinstated** in the following states: California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin.

Effective Date of the Order: The Order became effective through two deadlines. The first deadline for employees to receive the first dose of the vaccine has already passed (December 6, 2021). The second deadline is approaching quickly (January 4, 2022) to be fully vaccinated. CMS has stated that it will hold off from enforcing the Order. We expect further guidance to be issued soon.

As we mentioned in our last news blast, it is important to keep in mind that both states and private employers retain significant leeway to require employees to be vaccinated, subject to accommodation for sincerely held religious beliefs or medical reasons.

We will keep you posted on any developments. If you have questions or would like more information on this topic, please contact us.