

Status of COVID-19 Vaccination Orders

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The Biden Administration's efforts to boost COVID vaccination through employment mandates has been met with a frosty reception in the courts. In this Client News Alert, we provide a short summary of the legal status of the three sources of federal mandates regarding COVID-19 vaccinations and/or testing in the workplace.

1. Private Employers with 100 or more employees - OSHA Order

Status: NATIONWIDE STAY IN PLACE

OSHA's Covid-19 vaccination Order has been subjected to litigation with lawsuits filed in many federal jurisdictions. The Court of Appeals for the Fifth Circuit issued a nationwide decision that granted a motion to stay enforcement of the Order. That decision has been appealed by the federal government to the Court of Appeals for the Sixth Circuit (which was chosen to hear all cases on the order under a special federal lottery system), but ultimately it is likely that the U.S. Supreme Court will have the final word on this matter.

OSHA recently acknowledged that many employers and unions are in a tough spot as by the time litigation is completed, there would not be enough time to prepare and follow the Order by the January deadline. With OSHA's acknowledgement of that issue, it stated that it would not enforce the Order pending developments in the litigation.

2. Federal Employee and Federal Contractors

Status: NATIONWIDE STAY IN PLACE

The Federal employee/Federal contractor Executive Order and guidance has also been subjected to litigation. One of the first federal courts to hear this matter stopped its enforcement in Kentucky, Ohio, and Tennessee. This order was dealt yet another blow yesterday when a federal court in Georgia issued a nationwide injunction. We expect an appeal from the Biden Administration to be filed shortly.

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

Status: NATIONWIDE STAY IN PLACE

A federal district court in Louisiana placed a nationwide injunction on the CMS Order. It is expected that that this litigation will follow a similar path as the OSHA Order regarding its enforceability. It must be noted that many health care facilities have voluntarily put in place many of the requirements in the CMS Order and those requirements will likely remain regardless of the Order's status in the courts.

While governmental efforts to require vaccination must survive this gauntlet of court challenges, it is important to keep in mind that private employers retain significant leeway to require employees to be vaccinated, subject to accommodation for sincerely held religious beliefs or medical reasons. If you have questions or would like more information on this topic, please contact us.