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Labor & Employment Alert

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Federal COVID-19 vaccination mandates on hold

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Courts have now temporarily halted the three federal COVID-19 vaccination mandates impacting businesses.



What's the Impact?

- / Employers can pause implementation of federal vaccination mandates, but should continue preparing for the potential of future implementation and enforcement
- / Future implementation and enforcement depends on court rulings on constitutionality of the federal mandates
- / Employers should also continue to monitor and comply with any state and local vaccine mandates

Through a series of lawsuits across the country, opponents of the federal COVID-19 vaccination mandates have successfully sought preliminary injunctions to block enforcement of the requirements until the constitutionality of such mandates can be decided. Here's a brief update on each:

Fed-OSHA vaccination or test ETS for large employers

Effective November 12, 2021, the United States Circuit Court for the 5th Circuit halted implementation of the Fed-OSHA ETS, which required, among other things, that employers of 100 or more employees require that employees be vaccinated against COVID-19 or test weekly. This case was consolidated with other similar cases and is now pending before the United States Circuit Court for the 6th Circuit with briefing expected this week.

In response to the 5th Circuit decision, Fed-OSHA “suspended activities relating to the implementation and enforcement of the ETS pending future developments in the litigation.”

Centers for Medicare & Medicaid Services (CMS) mandate

Effective November 30, 2021, the United States District Court for the Western District of Louisiana issued a preliminary injunction blocking enforcement of the CMS mandate for facilities receiving Medicare and Medicaid reimbursements.

Facilities covered by this mandate were required to establish a policy ensuring all eligible staff received the COVID-19 vaccine prior to providing any care, treatment, or other services.

Federal contractor (and subcontractor) mandate

Effective December 7, 2021, the United States District Court for the Southern District of Georgia issued a preliminary injunction against enforcement nationwide of the executive order that authorized the promulgation of the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors. This decision puts on hold the requirement that federal contractors and subcontractors comply with the Guidance and its vaccination mandate.

Looking ahead

These decisions now beg the question—What should employers do now?

While these litigations will be expedited, court process still takes time and decisions are not expected immediately. Employers can use this time to continue to survey employees on vaccination status and to better understand that information across their businesses and in specific locations. Employers can also continue to educate and update their employees on vaccines and the status of the various mandates that, while currently on hold, may apply to them should the courts determine that some or all of the mandates are constitutional. Employers should also continue to review and understand any state and local COVID-19 mandates and requirements and to comply with those.

The Nixon Peabody team continues to help our clients stay abreast of the evolving state of federal, state, and local COVID-19 developments and navigate their businesses during the pandemic.

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