



Litigation Update on Vaccine Mandates

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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On November 30th, a federal judge in the Eastern District of Missouri granted petitioners' motion for a preliminary injunction of the CMS healthcare rule in [Missouri v. Biden](#), which injunction applied to healthcare facilities in 10 states (Alaska, Arkansas, Iowa, Kansas, Missouri, New Hampshire, Nebraska, Wyoming, North Dakota, South Dakota). But that was not the last blow of the day to the CMS rule. At the end of the day, a federal judge in the Western District of Louisiana issued a preliminary injunction enjoining implementation of the CMS vaccination mandate regulation [nationwide](#):

*"Plaintiff States' Motion for Preliminary Injunction is **GRANTED**. Therefore, the U.S. Department of Health and Human Services and the Center for Medicare and Medicaid Services, along with their directors, employees, Administrators and Secretaries are hereby **ENJOINED** and **RESTRAINED** from implementing the CMS Mandate set forth in 86 Fed. Reg. 61555-01 (November 5, 2021) as to all healthcare providers, suppliers, owners, employees, and all others covered by said CMS Mandate."*

The judge made clear that the Stay was to be applied nationwide in this portion of the opinion:

"In addressing the geographic scope of the preliminary injunction, due to the nationwide scope of the CMS Mandate, a nationwide injunction is necessary due to the need for uniformity. Texas, 809 F.3d at 187-88. Although this Court considered limiting the injunction to the fourteen Plaintiff States, there are unvaccinated healthcare workers in other states who also need protection. Therefore, the scope of this injunction will be nationwide, except for the states of Alaska, Arkansas, Iowa, Kansas, Missouri, New Hampshire, Nebraska, Wyoming, North Dakota, South Dakota, since these ten states are already under a preliminary injunction order dated November 29, 2021, out of the Eastern District of Missouri."

And that was not even the end of the bad news for President Biden's vaccination rules for the day. Also at the end of the day, a federal judge in the Eastern District of Kentucky issued an Order to Stay the [federal contractor vaccine mandate](#), applicable to contractors and subcontractors in Kentucky, Ohio, and Tennessee. That's notable relative to the OSHA ETS because if judges do not think the federal government has authority to mandate vaccines for companies that choose to do business with the federal government, or that accept federal funds in reimbursement for medical services, it is hard to see how judges of a similar pedigree would find that the federal government can impose vaccination requirements on private companies that do business only with private customers.

The CMS and federal contractor injunctions will move on to the Fifth Circuit and Sixth Circuit respectively, two courts that are already showing some hostility to President Biden's vaccination rules. The Supreme Court will still have something to say about all of this, though.

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