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OSHA Vaccine Rule Blocked Permanently by Fifth Circuit, But Judicial Review Will Continue

Article By:

Employment Labor and Benefits at Mintz

A three-judge panel on the Fifth Circuit Court of Appeals has now [permanently blocked](#) OSHA from implementing and enforcing its [vaccine rule](#), which impacts employers nationwide.

This is not the end of the judicial review road for the vaccine rule. Challenges to the rule were filed in multiple federal circuit courts across the country. When there are multiple filings like these, a multi-circuit “lottery” system is utilized for purposes of consolidation and clarity. All of the appeals are consolidated before the circuit court selected in the blind lottery, which will then hear the challenge to the rule. That lottery is expected to take place on or about Monday, November 16th.

If the Fifth Circuit is not selected in the lottery, then another appeals court will have an opportunity to issue the controlling decision here (which could, among other things, lift the Fifth Circuit’s stay). After that, regardless of the outcome, the Supreme Court will likely have the final word.

While the future of the vaccine rule continues to remain unknown, notwithstanding this latest decision, covered employers should consider continuing to take steps to come into compliance, given the short compliance window provided by OSHA if the rule is ultimately upheld.

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