

Legal Status of Vaccine Mandates

Article By:

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As the COVID pandemic nears the two year mark, manufacturing employers, like many employers, face a complicated and quickly changing legal landscape with respect to COVID protocols and requirements for employees. This is particularly true with respect to employer vaccine mandates. On a seemingly daily basis, there are new headlines proclaiming what an employer must do and must not do with respect to requiring employee vaccinations. Often, what is required one day, is prohibited the next. It is no wonder that one of manufacturing employers' main challenges is trying to comply with a constantly changing array of federal, state and local rules, requirements, and prohibitions.

While early on in the pandemic it was generally understood that employers could mandate that their employees be vaccinated, since that time several states have imposed restrictions regarding employer vaccine mandates, including [Texas](#), [Montana](#), and [Florida](#) among others. As most manufacturing employers are aware, there are vaccine mandates imposed by the federal government for certain employers based on size, connection to the health care industry and federal contractor status. The federal vaccine mandates have all been subject to legal challenges.

With the respect to the vaccine mandate for federal contractors, on Tuesday, November 30, 2021, a Kentucky federal court granted a request for a preliminary injunction halting implementation of the mandate in Kentucky, Ohio, and Tennessee. The court held that President Biden likely does not have the power to mandate that certain employees of federal contractors be vaccinated. While the preliminary injunction issued in Kentucky is limited to certain states, there are already similar challenges in other states and likely to be more developments on the horizon in the near future.

Similarly, for those manufacturing employers who are covered by the CMS vaccine mandate, which requires vaccines for employees that interact with staff at health care facilities that participate in Medicare and Medicaid programs, additional legal challenges have been launched. On Monday, November 29, 2021, a federal judge in the U.S. District Court for the Eastern District of Missouri granted a request for a preliminary injunction halting implementation of the mandate for Alaska, Arkansas, Iowa, Kansas, Missouri, New Hampshire, Nebraska, Wyoming, North Dakota, and South Dakota. The next day, a federal court in Louisiana entered a preliminary injunction for the CMS mandate on a nationwide basis, except for the states covered by the prior day's injunction.

Finally, the Biden administration's general vaccine mandate applying to employers with over 100 employees is also subject to multidistrict litigation and a preliminary injunction which stopped its implementation. After challenges by multiple states, and an injunction issued by the 5th Circuit Court

of Appeals, the lawsuits were consolidated and the 6th Circuit Court of Appeals was chosen to hear the challenges.

The preliminary injunctions implemented with respect to all three mandates are just the first step in the litigation process. These cases will all continue through the court system, with impending consequences for employers. With so many changes to the legal requirements affecting their businesses and employees, manufacturing employers must be sure to be in close contact with their legal counsel and stay up to date on the myriad of lawsuits and near daily updates regarding this quickly changing area of the law.

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