

# Federal Court Pauses CMS COVID-19 Vaccine Mandate For Health Care Workers; Employers May Still Require Employee Vaccination

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The Centers for Medicare and Medicaid Services' (CMS) vaccine mandate (Mandate)[1] has been preliminarily enjoined[2] on a nationwide basis due to a Nov. 30, 2021, decision by Judge Terry A. Doughty of the Western District Court of Louisiana, Monroe Division. Among other conclusions, Judge Doughty stated that mandating vaccination of health care workers should be done by Congress, not a government agency, although he also questioned whether even Congress had such authority.

The Louisiana injunction[3] applies on a nationwide basis and restrains CMS from implementing the [Mandate](#) "as to all health care providers, suppliers, owners, [and] employees." This preliminary injunction will remain in place until the final resolution of the larger case, or until any appellate orders from the Fifth Circuit Court of Appeals or the United States Supreme Court.

CMS has the option to appeal this preliminary injunction to the Fifth Circuit, which could vacate the preliminary injunction and allow the Mandate to take effect. Even assuming that CMS will file an appeal, given the potential time to complete an appellate review, the Dec. 6, 2021, deadline for the first phase of enforcement under the Mandate is in serious jeopardy. Employers may elect to mandate COVID-19 vaccinations under the policies that they already implemented, but until the preliminary injunction has been lifted, they are not required to do so.

This ruling injects further uncertainty into an already-challenging rule-implementation process, and covered entities may struggle to adopt policies that both prepare them for implementation of the Mandate while not exacerbating staff shortages. Covered entities should decide whether they want to continue with the implementation of vaccination policies drafted in accordance with the Mandate or modify their policies to reflect reduced enforcement. Any decision, however, will be subject to developing decisions by the courts.

For information on the Mandate, please see our [previous alert here](#).

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[1] Officially titled “Centers for Medicare and Medicaid Services Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule.

[2] A preliminary injunction is a court-ordered pause to an action that is awarded before trial in order to prevent harm that the plaintiff might suffer if the defendant is not required to do something.

[3] The plaintiff-states are Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio.

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