

Spate of Recent Court Activity Puts President Biden's Vaccine Mandates in Question, Presenting Dilemmas for Employers

/ November 30, 2021 / Andrea Johnson and Dennis P. Duffy

Recent court rulings have thrown further doubt into the various federal vaccine mandates, raising questions for employers as to the application of same.

On, November 30, 2021, a district court in the Sixth Circuit entered a stay of the mandate affecting federal contractors, linked [here](#). The decision affects contractors in Kentucky, Ohio and Tennessee, but there are similar court cases pending in several jurisdictions (including Texas), and other states could be affected by either inconsistent or similar rulings.

The day before (11/29), the healthcare workers mandate was similarly blocked by the Eastern District of Missouri, Eastern Division, order linked [here](#). The court's decision affects a particular group of ten states (Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming), but, as with the other two mandates (affecting federal contractors, see above, and private employers, see below), there are several different lawsuits around the country challenging the healthcare worker mandate. Then, on November 30, the Missouri ruling was followed up by a Louisiana court order which expanded this ban to all of the other states.

Finally, last week, just before Thanksgiving, OSHA filed a motion with the Sixth Circuit seeking to lift the stay, entered by the 5th Circuit, regarding the private employer mandate, which affects employers with 100 or more employees. The Fifth Circuit entered its stay very quickly after OSHA issued its mandate through its emergency authority, but several other cases were also pending around the country. Visit our "[Law in the Workplace](#)" [blog](#) for our recent discussions the Fifth Circuit stay. Given all of these filings, and by the federal appellate court rules, the Sixth Circuit ended up as the central appeals court considering these issues on a consolidated basis. No ruling on OSHA's motion to lift the stay has been issued to this moment.

It is a good bet that U.S. Supreme Court will eventually decide these questions. Presumably, there will be consolidation of the healthcare and federal contractor lawsuits, as there has been with the private employer lawsuits. But this consolidation has not yet occurred. Likewise, when the High Court will hear these matters and how the justices will rule are matters, obviously, not known. It is also unclear when the Sixth Circuit will act on OSHA's motion to lift the stay as to the private employer mandate (it appears unlikely that the court will grant OSHA's motion), whether the original January 4, 2022 deadline will hold, and what employers should do in the interim. One would assume there would be an adjustment made on the date. Nonetheless, there is some momentum against all of these mandates, though the issues are not, as shown above, firmly decided, and other court decisions down the road may differ with the court rulings to date.

All of this action leaves employers without absolute clarity as to whether employers should proceed with plans to comply or, if for the time being, "press pause" and wait for the final court determinations. Certainly, the mandates place a substantial burden on employers (and on employees), so avoiding that burden may be understandably desired. At a

minimum, employers should probably prepare for the *possibility* that the mandates may proceed, to avoid being caught with little time to comply. The Labor & Employment lawyers of KRCL are monitoring this situation daily, providing advice to clients on how to work around and with the mandates, and providing updates as the court orders and government action proceed.

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