



Courts Enjoin Federal COVID-19 Vaccine Mandates – An Update

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The status of federal vaccine mandates changes from one day to the next. As of today, the three major federal vaccine mandates – OSHA COVID-19 ETS, CMS Interim Final Rule, and Federal Contractor Executive Order – are all subject to nationwide injunctions.

OSHA ETS

On Nov. 12, 2021, the Fifth Circuit Court of Appeals entered a nationwide stay of the [OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard](#) pending further judicial review. OSHA then announced that it would take no action to implement or enforce the ETS pending further developments in the litigation.

On Nov. 16, 2021, the U.S. Judicial Panel on Multidistrict Litigation consolidated all challenges to the ETS in the Sixth Circuit Court of Appeals. The government has moved to dissolve the Fifth Circuit's stay order, and a briefing schedule sets a Dec. 10 deadline. On Dec. 3, the Sixth Circuit denied OSHA's request to expedite proceedings. Now, the initial ETS Dec. 5 program development and implementation deadline has passed.

Separately, OSHA must decide what to do with its original [COVID-19 Health Care Emergency Temporary Standard](#) that expires on Dec. 21, 2021 – six months after it was enacted on June 21. OSHA has not said when that

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permanent standard will be issued or how it will be different from the emergency standard.

CMS Rule

On Nov. 29, 2021, the U.S. District Court for the Eastern District of Missouri granted a preliminary injunction blocking the [Centers for Medicare & Medicaid Services Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule](#). The decision only applies within the ten petitioner States: Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota and Wyoming.

On Nov. 30, 2021, the U.S. District Court for the Western District of Louisiana granted a nationwide injunction (with a limited exception for the ten states already covered by the Missouri order). CMS announced that it would not enforce or implement its COVID-19 Health Care Staff Vaccination Rule in light of the injunction. An appeal of the nationwide injunction is likely and would be decided by the Fifth Circuit Court of Appeals, the federal court of appeals that originally denied enforcement of the OSHA ETS.

Federal Contractor Mandate

On Nov. 30, 2021, the U.S. District Court for the Eastern District of Kentucky granted a preliminary injunction to block enforcement of the Presidential Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors. The decision only applies in Kentucky, Ohio, and Tennessee.

On Dec. 7, 2021, the U.S. District Court for the Southern District of Georgia issued a nationwide injunction. An appeal of the nationwide injunction would be decided by the Eleventh Circuit Court of Appeals, which recently refused to halt the CMS Rule.

With all three major federal vaccine mandates enjoined nationwide, the corresponding deadlines established by the respective mandates are not in effect. Appeals are expected in all three cases, and the ultimate decision will most likely rest with the U.S. Supreme Court.

Because any of these mandates could be reinstated, employers should continue to prepare to implement these requirements. That preparation may include: gathering vaccination status of your employees; exploring options for testing availability; and reviewing recordkeeping options from payroll providers or HRIS software for the confidential storage and retrieval of vaccination and test information.