



Fifth Circuit Court Blocks Vaccine Mandate for Employers

Michael R. Blum, Karl W. Butterer and Clifford L. Hammond

Labor & Employment Law E-blast

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Over the weekend, the Fifth Circuit Court of Appeals granted an emergency stay of the Occupational Safety and Health Administration's (OSHA's) new rules, effectively blocking enforcement of the vaccination mandate for employers, pending further legal action.

Please note that nearly every circuit is addressing this issue and the various appeals will each be assigned to a circuit court by lottery selection. There is still some uncertainty as to which court will be assigned and what decision they will come to.

The Biden Administration had originally submitted a January 4, 2022 deadline for businesses with at least 100 employees to either mandate COVID-19 vaccinations for their workers or require masks and weekly testing for unvaccinated employees.

Approximately 84 million workers—or roughly two-thirds of the U.S. private-sector labor force—could have been impacted by the mandate with massive fines looming for noncompliance violations.

The Fifth Circuit Court of Appeals in New Orleans called the mandate "staggeringly overbroad" and "The mandate is a one-size-fits-all sledgehammer that makes hardly any attempt to account for differences in workplaces (and workers)."

The judges panel ordered OSHA to take no further steps to implement or enforce the mandate until a further court order.

Should employers proceed with making plans for compliance or take a wait-and-see approach?

As OSHA is barred from implementing or enforcing the emergency temporary standard (ETS) and given the Fifth Circuit's clear stance, waiting to see how the litigation progresses is a reasonable choice.

However, nothing in the Fifth Circuit ruling prohibits employers from voluntarily implementing mandatory vaccination or testing policies subject to accommodations for qualifying religious and disability related

AUTHORS/ CONTRIBUTORS

Michael R. Blum

Karl W. Butterer

Clifford L. Hammond

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reasons.

We will continue to monitor this situation and keep you apprised of any crucial changes. If you have any questions about how to proceed or how your organization can remain compliant, please contact a member of our labor & employment practice group:

- Mike Blum (Southfield)...248.785.4722...mblum@fosterswift.com
- Karl Butterer (Grand Rapids)...616.726.2212...kbutterer@fosterswift.com
- Cliff Hammond (Lansing)...517.371.8135...chammond@fosterswift.com