

Status Update: Where Do Courts Stand on Vaccine Mandates? (UPDATED)

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NOTE: *With legal challenges to the federal vaccine mandates coming quickly, we'll update this alert when new decisions come in. The latest update comes on December 20.*

Since the federal government released a series of measures to promote vaccination through private employers, each has faced significant legal challenges.

There have been three major federal vaccine mandates affecting private employers:

- The Occupational Safety and Health Administration's Emergency Temporary Standard (ETS), which calls for all private employers with 100 or more employees to have their employees vaccinated or go through regular COVID testing.
- The Centers for Medicare & Medicaid Services (CMS) final rule, which requires workers in most health care settings that participate in the Medicare and Medicaid programs to be fully vaccinated against COVID-19 by Jan. 4, with no testing alternative.
- An executive order requiring covered federal contractors to be vaccinated, with no testing alternative.

December 28 update: The U.S. Supreme Court will hear oral arguments January 7 to determine whether the Biden administration can enforce the OSHA vaccination mandate and the CMS final rule.

Because of the legal challenges and subsequent judicial rulings on each one, it would be understandable if there is a high level of confusion as to where each stand. Here is a breakdown of the status of each regulation:

OSHA's ETS: Enforcement begins in January

December 20 update: A federal courtroom win on December 17 has allowed OSHA to continue with its ETS, and the organization [said shortly thereafter](#) that it will not issue citations for noncompliance until January 10.

As for its requirement of weekly testing of employees who are not vaccinated, OSHA said it will not begin citations for noncompliance on testing until February 9, as long as the "employer is exercising reasonable, good faith efforts to come into compliance with the standard."

The delays in issuing citations will be to "provide employers with sufficient time to come into compliance," the

OSHA statement said.

The battle over the mandate doesn't seem to be over, though, as multiple groups already have petitioned the U.S. Supreme Court -- the next legal step in the case -- to take up the issue and render its own ruling.

CMS's final rule: Currently suspended

With multiple law suits pending, the CMS now will suspend all enforcement of its mandate while the lawsuits are in the courts. It will, however, challenge the claims of the lawsuits.

On November 30, a federal district court judge in Louisiana granted a nationwide preliminary injunction to prevent enforcement of the final rule. The court argued that the CMS lacked statutory authority to issue the rule. This came just one day after a federal district court judge in Missouri enjoined the final rule in 10 states. The CMS has yet to appeal either decision.

On the other hand, at least one court, a federal district court judge in Florida, denied a preliminary injunction to enjoin the final rule. However, that judge is reconsidering that denial in light of Florida's new legislation effectively prohibiting vaccination mandates.

December 16 update: A federal appeals court has removed the nationwide block on the CMS final rule. With that and the previous Missouri court ruling, the block of the final rule is effective in 25 states. There are 25 other states not included in the block where the final rule is applicable, including Pennsylvania and most Mid-Atlantic states. While the CMS on December 2 issued a memorandum saying it has suspended enforcement of the final rule, it stated that it was enacting the suspension of the rule "pending litigation." Whether the court's Wednesday ruling will cause CMS to lift the suspension in the 25 applicable states or not will likely be clarified by CMS in the coming days. Stay tuned.

Biden's executive order covering federal contractors: Currently enjoined

December 20 update: A federal appeals court decided not to reinstate the executive order, and the mandate remains blocked nationwide.

Since its implementation, deadlines for compliance have been pushed back on several occasions.

A Georgia federal judge ruled on December 7 that the Biden administration likely exceeded its authority when it mandated the vaccine for federal contract workers, and issued a nationwide injunction to keep those workers from being forced to be vaccinated.

Before that, on November 30, a federal judge in Kentucky granted a preliminary injunction to enjoin the mandate from enforcement in three states: Kentucky, Ohio, and Tennessee. Although the order only applies to federal contracts in those three states, it is the first substantive decision out of numerous lawsuits pending across the country.

To date, neither Biden nor the Safer Federal Workforce Task Force has commented on whether it intends to appeal the preliminary injunction.

Cases challenging the vaccination regulations are being brought to court at a breakneck speed, and the status of each of the regulations could change on any day. While the constant legal decisions could be difficult for employers to

follow, Barley Snyder attorneys are watching each one of them to determine their legal status. If you have any questions regarding the emergency regulation, please contact [any member of the Barley Snyder Employment Practice Group](#).

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