

Preliminary Injunction that Enjoins CMS Vaccine Mandate

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Practice Area: Health Law & Labor and Employment & School Law & County
and Municipal Governance & Government Law & Manufacturing

On November 30, 2021, a federal district court in Louisiana issued an order that blocks the U.S. Department of Health and Human Services and the Center for Medicare and Medicaid Services from implementing the CMS Vaccination Rule that requires covered facilities to implement and enforce mandatory vaccination policies as a part of President Biden's COVID-19 action plan. The order applies nationwide, except for states that had already been granted a similar order in a pending case in Missouri. It appears that, at present, the CMS Vaccination Rule has been blocked from going into effect in Wisconsin, pending the court's final determination of the legal challenges to the rule.

The issuance of this order now means that enforcement of both the CMS Vaccination Rule and the OSHA Emergency Temporary Standard (which imposes a vaccination mandate on employers with more than 100 employees) has been blocked pending the resolution of legal challenges to these mandates. Please note, however, that enforcement of the separate vaccine mandate for federal contractors (the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors) has not been blocked in the State of Wisconsin. Although at least one court has issued an order blocking enforcement of the federal contractor mandate, that order applies only to three states (Kentucky, Ohio, and Tennessee).

The Louisiana court's decision has left many facilities covered by the CMS Interim Final Rule asking, now what do we do? While the CMS mandate may be enjoined for now, employers nonetheless have the right to mandate that employees receive the COVID vaccine, provided the employer grants exemptions for properly documented religious accommodation requests and disabilities. Further, the CMS mandate may be reinstated in the near future as the result of continued legal processes. If your organization wishes to move forward with its COVID vaccine mandate for business planning reasons, or simply because you believe it is the best policy to protect patients, residents, employees, and the community, it may do so.

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