

Status Of Lawsuits on Federal Vaccine Requirements: December 8, 2021

As of December 8, 2021, vaccine or testing mandates affecting large employers (OSHA), health care workers (CMS) and federal contractors are all enjoined or stayed and being reviewed at the federal appeals court level. Trump-appointed judges have been particularly aggressive in moving to stay and enjoin these rules. It is expected that all three rules will ultimately be appealed to the Supreme Court.

LARGE EMPLOYER RULE (OSHA)

Status: Stayed nationally by the 5th Circuit U.S. Court of Appeals

- **The OSHA Rule Has Been Stayed By The 5th Circuit Court Of Appeals.** On November 6, a three judge panel of the 5th Circuit U.S. Court of Appeals in New Orleans [issued a stay](#) on implementation and enforcement of OSHA's rule requiring private employers with more than 100 employees to implement programs in which workers must show proof of vaccination or undergo weekly testing for Covid-19. The rule is set to take effect on January 4, 2022 and covers roughly 84 million workers nationwide. The judges did not rule on the request for a permanent injunction led by state Republican officials.
- **Two Of The Three Judges On The 5th Circuit Panel Are Trump Appointees.** Two Trump appointees, Kyle Duncan and Kurt Engelhardt, were part of the three judge panel that stayed the OSHA rule. The judges cited potential "grave statutory and constitutional issues with the Mandate" in their ruling.
- **The OSHA Case Will Be Heard Next In The 6th Circuit Court Of Appeals.** Because challenges to the OSHA rule were filed in numerous federal courts of appeals, a lottery was held to determine which court would decide the case. The case will be heard by the 6th Circuit, and many experts believe it will eventually end up before the Supreme Court. The federal government has filed a motion asking the 6th Circuit to lift the Fifth Circuit's stay and allow the rule to take effect; that motion has not been decided. Twenty of the 26 judges on the 6th Circuit were appointed by Republicans, and roughly [a third of the circuit](#) was appointed by Donald Trump.

HEALTH CARE WORKER RULE (CMS)

Status: Enjoined nationwide.

- **Two District Court Judges Issued Preliminary Injunctions Blocking A CMS Rule Requiring Health Care Workers To Be Vaccinated.** On November 29, U.S. District Judge Matthew Schelp in St. Louis granted a [preliminary injunction](#) in 10 states against a CMS rule that requires employees at facilities receiving Medicare and Medicaid funding to be

vaccinated against Covid-19. On November 30, U.S. District Judge Terry Doughty in Monroe, Louisiana issued a [separate preliminary injunction](#) against the rule and applied his ruling nationwide. Together the orders block the Biden administration from enforcing the rule nationwide until the legal challenges are finally decided. The CMS rule is set to cover an estimated 17 million workers at 76,000 sites nationwide.

- **Both Judges Who Enjoined The CMS Rule Were Appointed By Donald Trump.** Matthew Schelp and Terry Doughty were both [appointed to the bench](#) by Donald Trump. Schelp ruled that the CMS rule presents “an unprecedented demand to federally dictate the private medical decisions of millions of Americans. Doughty’s ruling states that, “There is no question that mandating a vaccine to ... healthcare workers is something that should be done by Congress, not a government agency,” adding that, “It is not clear that even an Act of Congress mandating a vaccine would be constitutional.”
- **The 11th Circuit Court Of Appeals Rejected Florida’s Request To Temporarily Block The CMS Rule.** A judge in Florida rejected the State of Florida’s challenge to the CMS rule and Florida has appealed that ruling. While Florida’s appeal is pending a panel of the 11th Circuit Court of Appeals rejected the state’s request to temporarily enjoin the rule.
- **CMS Filed Notices Of Appeal With The Fifth and Eighth Circuit Courts Of Appeals.** CMS has filed a [notice of appeal](#) of Judge Schelp’s injunction in Missouri with the 8th Circuit Court of Appeals and has appealed Judge Doughty’s ruling to the 5th Circuit Court of Appeals. It has asked both courts of appeals to stay the preliminary injunctions, which would allow the rule to go back into effect. These cases, too, are likely to end up before the Supreme Court.

FEDERAL CONTRACTORS RULE

Status: Enjoined nationally

- **A District Judge In Georgia Issued A Nationwide Preliminary Injunction Blocking A Rule Mandating Vaccinations For Federal Contractors.** On December 7, District Judge R. Stan Baker, a Trump appointee, issued a [preliminary injunction](#) for the Biden administration’s vaccine mandate for federal contractors and subcontractors in all covered contracts nationwide. District Judge Gregory Van Tatenhove in the Eastern District of Kentucky had previously issued a [preliminary injunction](#) covering only Kentucky, Ohio, and Tennessee. Additional challenges to this rule are pending in other jurisdictions.
- **An Appeal Of The Federal Contractor Rule Injunction Would Be Heard In The Eleventh Circuit.** An appeal of Judge Baker’s nationwide injunction blocking the federal contractor vaccination rule in three states would be [heard](#) by the Eleventh Circuit Court

of Appeals, the same appellate court that issued a ruling finding that the CMS vaccination mandate for health care workers was properly within the authority of the agency.