



Kentucky Hospital Employees Latest to File Suit Over Workplace Vaccine Mandate

Insights

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Coming on the heels of Kentucky's record-high number of COVID-19 infections, dozens of employees of St. Elizabeth Healthcare just filed a lawsuit in the U.S. District Court in Covington against the hospital in response to its announced workplace vaccine mandate. The September 3 lawsuit alleges the employees have been coerced into being vaccinated with an "unapproved" vaccine, despite the fact the Pfizer-BioNTech vaccine received full approval from the U.S. Food and Drug Administration (FDA) on August 23. All previous efforts by workers across the country to overturn an employer vaccine mandate through litigation have failed, but what do employers need to know about this latest attempt?

State of Emergency in Kentucky Leads to Hospital Mandate

Kentucky's COVID-19 infection rates continue to rise rapidly, and the Commonwealth recently reached a record-high number of infections in early September. In August 2021, Kentucky Governor Andy Beshear called on Kentucky's private sector employers to require their employees to get vaccinated, absent any applicable religious or medical exemption. Notably, even the EEOC has indicated that employers may mandate COVID-19 vaccines at their workplaces.

In light of these developments, multiple hospital systems in Kentucky, including the St. Elizabeth healthcare system in Northern Kentucky as well as hospitals in Lexington and Louisville, announced in early August 2021 that they would require their employees to be vaccinated against COVID-19. St. Elizabeth's announcement indicated there would be exceptions to the requirement if employees qualified for a religious or medical exemption. In addition, the hospital agreed to allow their staff until September 15 to get their first shot. These mandates have been endorsed by a number of state healthcare associations, including the Kentucky Hospital Association, Kentucky Nurses Association, and the Kentucky Medical Association.

Hospital Employees File Suit to Block Mandate

Regardless of the facts laid out above, the plaintiffs allege mandatory vaccinations are "a fraud upon the entire American public" and claim a vaccine mandate requires them to "participate in a medical experiment." Indeed, the 23-count Complaint alleges, among other things, a claim of "fraud in the concealment," which alleges St. Elizabeth's was "fully aware and/or recklessly ignored the

inaccuracy of both the internal and external reporting regarding COVID-19” in order to fit the hospital’s “intended narrative” regarding the vaccine.

A similar lawsuit filed by Methodist Hospital employees in Texas was dismissed by the court in June 2021. In that case, employees alleged they were being forced to participate in a “human experiment” by being required to be vaccinated against COVID-19. The court determined the plaintiffs were free to refuse the vaccine but would simply have to find work elsewhere if they did. As with the St. Elizabeth’s case, the Methodist Hospital plaintiffs alleged the vaccine mandate was a violation of the Nuremberg Code of 1947. The Texas opinion noted that, not only does the Nuremberg Code not apply to private employers, but it was also “reprehensible” for the plaintiffs to equate the vaccine mandate with medical experimentation in Nazi concentration camps.

Vaccine Mandates Gain Popularity as Delta Cases Surge – What Should You Do?

As vaccines began to roll out in late 2020 and early 2021, employers seemed to be hesitant to impose vaccine mandates. A combination of factors over the past two months – including the high transmissibility of the Delta variant, the full approval of the Pfizer vaccine, and of course the impending mandate-or-test rule from OSHA – will no doubt lead more employers to implement a mandate. In addition, at this stage, many employers may find that those employees who were voluntarily going to be vaccinated have already done so, leaving a mandate a final option to get remaining employees vaccinated.

According to our FP COVID-19 Employment Litigation Tracker, employees have filed 24 lawsuits against employers across the country challenging vaccine mandates. To date, none of them have been successful. However, just because employers have enjoyed universal success in rolling out vaccine mandates doesn’t mean that your organization is without risk if you pursue such a course of action.

- Make sure to first check out our 6-Step Guide to Impose a Vaccine Mandate.
- Most significantly, you need to ensure you have a robust religious and medical accommodation system in place. Read our 3-Step Guide for Employers to Respond to COVID-19 Vaccine Religious Objections for more information.

For further information about COVID-19-related litigation being filed across the country, and to run your own analyses of our litigation data, you can visit Fisher Phillips’ COVID-19 Employment Litigation Tracker. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips’ Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or the authors of this Insight.

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Todd B. Logsdon
Partner
502.561.3971
[Email](#)

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