

BREAKING: APPEALS COURT REINSTATES HEALTHCARE WORKPLACE VACCINE MANDATE FOR HALF THE COUNTRY

Insights
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Serving up yet another curveball for healthcare employers, the Fifth Circuit Court of Appeals effectively [reactivated the CMS vaccination mandate](#) across nearly half of the country with a surprise decision on Wednesday afternoon. As explained below, the December 15 decision raises further challenges and poses new questions for affected employers regulated by the Centers for Medicare and Medicaid Services (CMS). What do you need to know about this ruling, and what should you do as a result?

Where Do You Stand?

Yesterday's Fifth Circuit decision permits CMS to proceed in enforcing its vaccination mandate in all states that were *not* plaintiffs in [the Louisiana decision in which a federal district judge had issued an order halting enforcement of the mandate nationwide](#). Because this decision came from the Fifth Circuit, it also does not affect the [decision by a federal judge in Missouri, which blocked enforcement of the vaccine mandate in 10 other states](#). Thus, states governed by the Missouri decision are also still barred from enforcing the mandate. Here's a summary to explain where things currently stand:

As of December 16, 2021

CMS Mandate Can Be Enforced

California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey,

Related People



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New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, Wisconsin

If you fall in the above category, CMS will soon have the authority to enforce the vaccine mandate in your state and you need to take immediate compliance steps.

CMS Mandate Still Blocked by Nov. 30 Louisiana Decision

Alabama, Arizona, Georgia, Montana, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Ohio, Oklahoma, South Carolina, Utah, West Virginia

CMS Mandate Still Blocked by Nov. 29 Missouri Decision

Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, Wyoming

CMS Mandate Blocked by Subsequent Court Decision(s)

Texas

If you fall in these three categories, you are spared from compliance obligations – for now.

What Should You Do?

This scenario obviously raises new – and so far unanswered – questions for those CMS-regulated employers who are once again subject to [the CMS rule and its associated deadlines](#). Since the CMS mandate's first deadline of December 4 has already passed and the January 4, 2022 deadline for full compliance is right around the corner, employers are rightfully confused as to what steps, if any, they should take moving forward.

Although it is far from guaranteed, CMS may revise its deadlines given the rollercoaster ride we've all been on the past several weeks. It is also possible that the vaccine mandate may have received only a brief reprieve. The Fifth Circuit stopped short of approving the mandate, ruling only that the Louisiana judge had exceeded his authority in enjoining the vaccine mandate nationwide.

In states such as Florida and Tennessee – where the CMS mandate is reinstated and new state laws or executive orders have all but gutted employer vaccine mandates – a clear conflict exists between state and federal law on this

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issue. Although the CMS mandate clearly states its intention to supersede any contrary state or local law it remains to be seen as to how long it remains in place, if at all.

It is also noteworthy that a district court in Florida previously refused to enjoin the CMS vaccination mandate. Earlier this month, the Eleventh Circuit Court of Appeals declined to overrule that decision as well.

5-Step Survival Guide

For CMS-regulated employers in states where the CMS mandate has been reinstated, the road ahead thus remains at least somewhat uncertain. Should you press forward full-steam with compliance efforts, barely a week before Christmas? Or should you proceed more cautiously?

Those answers may come into sharper focus in the coming days with further guidance from CMS or other courts. If nothing else, all CMS-regulated employers should at least be taking steps to assess the vaccination status of your workforce and consider how you would proceed if the CMS deadline remain in place. [Our earlier discussion regarding preparation for the mandate contains helpful tips](#), including a five-step survival guide.

Conclusion

In the meantime, we will continue to monitor developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Healthcare Industry Group](#).