

## CMS Vaccine Mandate Legal Challenge Update

12.17.2021

Previously, we posted an update regarding several legal challenges to the recently published rules regarding vaccine mandates. This article provides the most recent developments as they relate to the Centers for Medicare & Medicaid Services (“CMS”) vaccine mandate. For information regarding this rule, see our previous article [here](#).

### Federal Circuit Court Rulings

Two recent U.S. Circuit Courts provided key rulings to the ongoing legal battle over the Biden Administration’s vaccine mandates. On December 15, the U.S. Court of Appeals for the Fifth Circuit considered the Louisiana district court’s ruling to enjoin the CMS vaccine mandate from going into effect nationwide. The Fifth Circuit judge upheld the preliminary injunction *only as applied to facilities in the 14 plaintiff states that brought the suit*. This includes: Alabama, Arizona, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, Utah, and West Virginia. The Fifth Circuit panel criticized the district court for giving little justification over issuing a nationwide injunction and provided that the injunction should not apply outside of the plaintiff states.

The Fifth Circuit also took note that there were other courts currently considering the mandate as well. This includes the Missouri district court that enjoined the rule from applying to the following states: Alaska, Arkansas, Iowa, Kansas Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. On December 13, the U.S. Court of Appeals for the Eight Circuit ruled that the injunction is allowed to stay in place against these states.

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Therefore, the following chart currently displays where the CMS Vaccine Mandate is currently in place and where it is enjoined: **Mandate in Place** California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin. **Mandate Enjoined** Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, Wyoming.

### What's Next

CMS issued a memorandum on December 2, declaring that the agency would be suspending activities relating to the implementation and enforcement of the CMS Vaccine Mandate rule pending how the legal challenges develop in the courts. Essentially, CMS was not going to enforce the rule during this period of time. It remains to be seen whether these recent rulings will affect CMS' approach here. It may be likely that CMS will soon come out with another memorandum addressing these recent rulings and provide more guidance on enforcement.

All of these legal challenges appear to be leading up to a visit to the United States Supreme Court. What is certain is that the legal challenges over this issue are not over. Until more certainty is provided by CMS on its' position, those affected by the rule might rely on CMS' memorandum providing that enforcement of the mandate is currently at a stand still. As always, we will continue to monitor the situation and provide additional updates as they become available. If you are unsure whether these rules impact your business or need assistance with any of your policies, please contact a member of Koley Jessen's Employment or Health Law Group.