

Court Upholds Health Care Operator's Vaccine Mandate

By Allen Smith, J.D.
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A health care employer in the Cincinnati area lawfully required its employees to get vaccinated or be fired, a federal district court judge ruled on Sept. 24 in one of the first decisions of its kind. In his ruling, U.S. District Judge David Bunning wrote: "If an employee believes his or her individual liberties are more important than legally permissible conditions on his or her employment, that employee can and should choose to exercise another individual liberty, no less significant—the right to seek other employment."

We've gathered articles on the news from *SHRM Online* and other media outlets.

No Violation of Individual Liberties

The plaintiffs failed to show that their individual liberties were violated by the hospital operator's requirement. St. Elizabeth Healthcare has the right to set its employment terms, said the judge. The employer's workers have until Oct. 1 to be vaccinated to remain employed.

(Reuters via Yahoo Finance (<https://finance.yahoo.com/news/u-court-upholds-hospital-employee-222934465.html>))

Judge Followed Supreme Court Decision

The federal judge in the case followed a 1905 U.S. Supreme Court decision that upheld a Massachusetts smallpox vaccination law. "Actual liberty for all of us cannot exist where individual liberties override potential injury done to others," the federal district court judge said. He noted that the employer's vaccine mandate is "substantially less restrictive" than the one in the 1905 case.

(*The Cincinnati Enquirer* (<https://www.cincinnati.com/story/news/2021/09/24/federal-judge-upholds-st-elizabeth-healthcares-vaccine-mandate/5846340001/>))

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COVID-19 Vaccination Resources (www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx)

Right to Set Conditions of Employment

"Plaintiffs have made clear that they are suspicious about the efficacy and safety of the COVID-19 vaccines," the judge wrote. "They have also presented the opinions of medical professionals who share the same suspicions. But unfortunately, suspicions cannot override the law, which recognizes defendants' right to set conditions of employment."

(The Hill (<https://thehill.com/policy/healthcare/573929-federal-judge-upholds-hospital-systems-covid-19-vaccine-mandate>))

Vaccination Mandates for School Employees

New York City, Washington, D.C., and Maryland's Montgomery County are among the jurisdictions that require vaccinations for school employees. The 2nd U.S. Circuit Court of Appeals temporarily halted New York City's mandate for teachers on Sept. 24. The case will now go to a three-judge panel. New York City school officials said they expect to prevail. The system's current vaccination-or-test mandate remains in effect in the interim.

In a separate legal action, a state judge considering a different case against the city school system recently decided in favor of the mandate, though the case isn't closed.

(*The Washington Post* (https://www.washingtonpost.com/education/new-york-schools-vaccine-mandate/2021/09/25/67441624-1e27-11ec-8380-5fbadbc43ef8_story.html))

Supreme Court Denied Review of Indiana University's Mandate

Last month, the U.S. Supreme Court denied review of Indiana University's COVID-19 vaccine mandate for employees and students, leaving in place the rulings of lower courts in favor of the university's requirements.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-supreme-court-denies-review-vaccine-mandate.aspx?_ga=2.253607049.1294724122.1632704965-1102745045.1615925853))

Unvaccinated Workers at Houston Methodist Resigned or Were Fired

In June, more than 150 Houston Methodist employees resigned or were fired, following the hospital system's requirement they get a COVID-19 vaccine to remain employed. The employees had two weeks to get the vaccine after they were suspended on June 8 for not following the mandate. On June 12, a judge dismissed a lawsuit some workers had filed against Houston Methodist regarding its vaccine mandate.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/unvaccinated-workers-resignations-terminations.aspx?_ga=2.19363000.1294724122.1632704965-1102745045.1615925853))

EEOC Guidance

The Equal Employment Opportunity Commission (EEOC) has said that federal anti-discrimination laws don't prohibit employers from requiring all employees who physically enter the workplace to be vaccinated to protect them from COVID-19. Employers that encourage or require vaccinations must nonetheless comply with the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964 and other workplace laws, according to the EEOC. "An employee with a religious objection or a disability may need to be excused from the mandate or otherwise accommodated," noted John Lomax, an attorney with Snell & Wilmer in Phoenix.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/if-workers-refuse-a-covid-19-vaccination.aspx?_ga=2.19363000.1294724122.1632704965-1102745045.1615925853))

Vaccination of Remote Federal Workers

Federal employees—including remote workers—will need to be fully vaccinated against the coronavirus by Nov. 22, according to recent FAQs from the Safer Federal Workforce Task Force.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/faqs-on-vaccine-mandate-for-federal-workers.aspx?_ga=2.19363000.1294724122.1632704965-1102745045.1615925853))

Deadline for Federal Contractors

Federal contractors have to be vaccinated against COVID-19 by Dec. 8, the Biden administration announced in guidance

(https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf) Sept. 24.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-federal-contractors-vaccination-due-date.aspx?_ga=2.19363000.1294724122.1632704965-1102745045.1615925853))

What to Expect from OSHA on COVID-19 Vaccine and Testing Rules

Businesses with at least 100 employees will soon be required to mandate that employees get vaccinated against the coronavirus or submit to weekly testing. Although employers are still waiting for the Occupational Safety and Health Administration (OSHA) to issue an emergency temporary standard and some key questions have yet to be answered, employers can take certain steps now to prepare.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/what-to-expect-from-osha-on-covid-19-vaccine-and-testing-rules.aspx?_ga=2.245682948.1294724122.1632704965-1102745045.1615925853))

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