

Summary of court challenges to federal vaccine mandates

As you may know, several lawsuits were filed challenging the legal authority of the Biden Administration to issue a broad COVID-19 employer mandate via the Department of Labor (DOL) and a separate health facility COVID-19 vaccination mandate using the Medicare Conditions of Participation or Conditions of Certification.

Late yesterday, a federal judge in Louisiana issued a nation-wide order suspending the authority of the Centers for Medicare and Medicaid Services (CMS) to enforce the COVID-19 vaccine mandate regulation while the court considers the merits of the legal challenge. This ruling follows a similar ruling by a different federal judge that prevents the Department of Labor/Occupational Safety and Health Administration (OSHA) from enforcing the COVID-19 employer mandate regulation while the court considers the legality of that mandate.

It should be noted that these rulings only apply to the federal COVID-19 vaccine mandates. ***If you are in a state or locality with a state or local COVID-19 vaccine mandate, you must still follow your state/local requirements.***

As was the case with the broad employer mandate ruling, we expect this ruling on the CMS regulation will be appealed by the Biden Administration. However, until action is taken on those appeals, the Biden Administration is prohibited from enforcing the CMS COVID-19 vaccine mandate.

It is highly likely that both the DOL and CMS rulings will end up being appealed to the U.S. Supreme Court for final resolution. It is not clear when this will be resolved by the courts.

Under the CMS regulation, facilities subject to the mandate were to establish a process or policy to fulfill the staff vaccination requirements over two phases. In addition, by December 6 staff at all health care facilities included within the regulation were to have received, at least the first dose COVID-19 vaccine and to have completed the vaccination process by Jan. 4, unless exempted.

In the meantime, for those covered by the CMS mandate, **we believe it would be prudent to continue developing COVID vaccination policies and procedures covering your facility/practice** in the event the court rules in favor of the Biden Administration.

Until these cases are resolved, you are not required by federal law or regulation to take any action against unvaccinated individuals.