

EMPLOYER LAW BLOG

UPDATE: Healthcare COVID-19 Vaccine Mandate Now Blocked Nationwide

AUTHOR: JAMES KEANEY

On November 30, 2021, District Judge Terry A. Doughty of the United States District Court for the Western District of Louisiana entered a memorandum and order blocking enforcement of the new CMS rule requiring COVID-19 vaccines for healthcare workers nationwide.

Earlier this week, as we reported in a separate blog article, a Missouri federal court blocked the rule in the ten (10) states who challenged it. However, the Louisiana federal court went a step further and clarified it applied nationwide “due to the need for uniformity.”

Like other recent decisions, the Court rejected jurisdictional and standing challenges raised by the federal government before concluding a preliminary injunction is necessary. And like other courts, this Court found the States would likely succeed on a variety of challenges to the new rule, including:

1. CMS's failure to follow proper procedure under the Administrative Procedure Act;
2. CMS's lack of the authority to mandate vaccines due to the vast economic and political consequences of the decision to do;
3. CMS engaged in arbitrary and capricious rulemaking by, among other things, failing to consider or arbitrarily rejecting alternatives to vaccine mandates, such as weekly testing; and
4. Intrusion into the States' powers and rights under the Tenth Amendment

The Court also found that the federal government failed to comply with certain provisions of the Social Security Act in issuing the rule. Ultimately, after stressing the importance of the rights and interests of the States and individuals across the country at issue, the Court found that irreparable harm would result if it did not block the new rule for now and that public interest favored an injunction.

In its conclusion, the Louisiana Court cited to a recent dissenting opinion by United States Supreme Court Justice Neil Gorsuch to state: “[i]f human nature and history teach anything, it is that civil liberties face grave risks when governments proclaim indefinite states of emergency.”

We will keep updating developments in this space so be sure to check back for more information as these legal challenges unfold.