

EMPLOYER LAW BLOG

VACCINE MANDATE UPDATES: 11th Circuit Backs CMS Vaccine Mandate while 6th Circuit Holds onto OSHA Vaccine Mandate Case and Denies Initial Request for Expediting Briefing

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Last Friday evening, on December 3, 2021, the Sixth Circuit Court of Appeals denied the federal government's request to transfer the case to the D.C. Circuit, as well as their request for expedited briefing on its request to dissolve the Fifth Circuit's stay. As a result, it is currently unknown when the Sixth Circuit will decide the merits of the challenges brought by the various states, but it is clear that the Sixth Circuit is hanging onto the case and it is probably safe to say that briefing and oral argument on the ultimate issues in the appeal will continue into later December and potentially the new year. Keep checking back for more updates, which we would expect to come early next week.

In other vaccine mandate news, on Monday, December 6, 2021, the Eleventh Circuit Court of Appeals rejected the State of Florida's attempt to block the healthcare vaccine mandate by CMS. In an opinion exceeding 90 pages, the Court largely rejected many of the arguments that were successful before the District Courts in Missouri and Louisiana, which we covered in separate blog articles here and here. With that said, the Eleventh Circuit's opinion denying the requested preliminary injunction does not change the fact that there still is currently a nationwide injunction, but it does show—at the very least—that the questions and challenges before the federal courts are not simple and the courts are not unanimous in their views on the validity of the CMS vaccine mandate.

In the meantime, reach out to a member of our Labor & Employment Team at Sandberg Phoenix with any questions or concerns you have and stay tuned for further developments.