

EMPLOYER LAW BLOG

VACCINE MANDATE UPDATE: Fifth Circuit Cuts Nationwide Injunction of Healthcare Vaccine Mandate in Half

AUTHOR: JAMES KEANEY

The Fifth Circuit began its opinion by denying the federal government's request to stay the injunction as it pertained to the 14 states that challenged the mandate before the Louisiana Court. The Fifth Circuit made clear that the "merits of the injunction will not likely be disturbed on appeal."

However, citing to "[p]rinciples of judicial restraint" and noting that courts have not been unanimous in their views about the validity of the healthcare mandate, the Fifth Circuit disagreed with the Louisiana court with regard to making a "binding judgment on the entire country."

In doing so, the Fifth Circuit echoed United States Supreme Court Justice Neil Gorsuch's concern about the frequency of nationwide injunctions and their potential to yield "rushed, high-stake, low-information decisions." The Fifth Circuit reasoned that, while the issue of the mandate was of "great significance," the Louisiana court "gave little justification for issuing an injunction outside the 14 states that brought this suit."

The takeaway here is that the Fifth Circuit will likely side with the Louisiana courts on the ultimate merits of the question as to whether the healthcare vaccine mandate is valid. Nonetheless, the Fifth Circuit's order is significant insofar as it has substantially limited the current stay on the mandate, making it the only federal vaccine mandate currently not blocked nationwide.

As a result of this order, the healthcare vaccine mandate is only stayed for now in 24 states—that is, the 14 states in the Louisiana case and the 10 states in the Missouri case. Like other vaccine mandate disputes, we expect that this case will eventually work its way up to the Supreme Court.

If you have any questions or concerns about what to do in the interim, do not hesitate to reach out to a member of our Labor & Employment Team at Sandberg Phoenix.