

EMPLOYER LAW BLOG

# VACCINE MANDATE UPDATE: Texas Judge Enjoins Federal Employee Vaccine Mandate

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This decision marks the first time a federal district court has enjoined the federal employee vaccine mandate. And it's one of the first decisions to explicitly rely on the reasoning of the Supreme Court's OSHA vaccine mandate opinion earlier this month to find another vaccine mandate unlawful.

The plaintiffs in this case asked the Court to also enjoin the federal contractor vaccine mandate. But the Court declined to rule on that request, noting that mandate has already been enjoined nationwide by another federal district court in Georgia.

But the Court did grant the plaintiffs' request to enjoin the vaccine mandate for employees of the federal government, finding it amounted "to a presidential mandate that all federal employees consent to vaccination against COVID-19 or lose their jobs."

The Court began its opinion by observing the case is not "about the federal government's power, exercised properly, to mandate vaccination of its employees. It is instead about whether the President can, with the stroke of a pen and without the input of Congress, require millions of federal employees to undergo a medical procedure as a condition of their employment." It added: "That, under the current state of the law as just recently expressed by the Supreme Court, is a bridge too far."

Throughout its opinion, the Court relied on recent precedent recognizing that "the Hobson's choice employees face between 'their job(s) and their jab(s)' amounts to irreparable harm."

With this threshold showing of "irreparable harm" cleared, the Court addressed the claim that the mandate is unlawful because: (1) there is no statute or constitutional provision that authorizes the President to issue it; and (2) its issuance violated the Administrative Procedure Act ("APA").

On the first claim of unlawfulness, the Court agreed with the challengers. The Court stressed that becoming vaccinated did not qualify as “workplace conduct” that the President could regulate, especially in light of the Supreme Court’s recent recognition that “COVID-19 is not a workplace risk, but rather a ‘universal risk’ that is ‘no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases.’”

The Court also rejected the government’s contention that Article II of the United States Constitution gives the President the power to issue the mandate. Emphasizing that the government failed to identify any prior example “of a previous chief executive invoking the power to impose medical procedures on civilian federal employees” and to identify any “limiting principle” on exercising such a power, the Court concluded: “however extensive that power is, the federal-worker mandate exceeds it.”

But after finding for the challengers’ on this first claim of lawfulness, the Court rejected the challengers’ claim that the President’s issuance of the mandate violated the APA. This was because, under Supreme Court precedent, “executive orders [themselves] are not reviewable under the APA.”

Finally, the Court—while recognizing the government’s “undeniable interest in protecting the public against COVID-19”—found that the equities nonetheless weighed in favor of an injunction. In doing so, the Court noted that the COVID-19 vaccination rate among federal employees exceeds 88 percent, less restrictive measures (like masking, physical distancing, and remote work) could be implemented, and harm would result “by terminating unvaccinated workers who provide vital services to the nation.”

For all these reasons, the Court found a nationwide injunction of the federal employee vaccine mandate appropriate. Nonetheless, following the Court’s decision, the federal government immediately announced its intention to appeal.

Stay tuned and keep checking back in for further developments.