

VACCINE UPDATE: Fifth Circuit Reverses Course and Reinstates Federal Employee Vaccine Mandate

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In a 2-1 decision on April 7, 2022, the Fifth Circuit held the lower court did not have jurisdiction to enjoin the federal employee vaccine mandate. The key to the Court's decision was the Civil Service Reform Act of 1978 ("CSRA"), a federal law that established "comprehensive and exclusive procedures for settling work-related controversies between federal civil-service employees and the federal government."

The law provides for administrative and judicial review of "specified adverse employment actions," such as removals, suspensions for more than fourteen days, pay or grade reductions, or furloughs lasting thirty days or less. However, the plaintiff in the underlying case had not yet been disciplined.

The government argued the law's specific framework for resolving personnel disputes among federal employees and the government precluded the lower court from getting involved, even if the plaintiff had not yet suffered an adverse action.

The Fifth Circuit majority agreed: "the district court erroneously held that the CSRA does not apply until the plaintiffs suffer an adverse employment action."

But Circuit Judge Rhesa Hawkins Barksdale viewed it differently. In his dissent, he observed the executive order mandating the vaccine "does not constitute an adverse action subject to the CSRA." In his view, requiring employees to receive adverse action before seeking relief through the CSRA "would result in the very type of lengthy and haphazard results CSRA was enacted to prevent."

It remains to be seen where this case goes from here. Like other vaccine mandate challengers, the plaintiffs, in this case, may seek review by the Supreme Court.

It is also important to remember that this challenge is separate and apart from the challenge to the federal *contractor* vaccine mandate, which currently remains before the Eleventh Circuit.

In that case, the Eleventh Circuit denied the parties' request for oral argument to occur in February. Instead, oral argument in that case is currently scheduled for early April, so be sure to check back soon for further updates.

Stay tuned.