

**TO:** Clients  
**FROM:** Ulman Public Policy  
**DATE:** January 3, 2021

**RE: Tracking Legal Challenges to Federal Vaccine Mandates**

**Private Sector Employer Vaccine Mandate**

On November 5, the Occupational Safety and Health Administration (OSHA) issued its COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to implement vaccination or testing policies for their workers. Over three dozen lawsuits were filed against the rule, with at least one in all 12 Circuit Courts in the country.

Date	Activity
Nov 6, 2021	<a href="#">US Court of Appeals for the 5<sup>th</sup> Circuit granted an emergency motion to stay</a> the interim final rule in a case brought by over two dozen companies and Louisiana, South Carolina, Texas, and Utah
Nov 12, 2021	5 <sup>th</sup> Circuit <a href="#">extended the stay</a> while they further reviewed the motions for a permanent injunction; ordered OSHA to stop implementation and enforcement of the ETS until further court order
Nov 18, 2021	A lottery was held to consolidate the various cases and determine which Circuit Court would hear the case; 6 <sup>th</sup> Circuit won the lottery; stay remains in place while 6 <sup>th</sup> Circuit decides what it wants to do
Nov 23, 2021	Multiple petitioners filed a motion asking the court to hear the suit <i>en banc</i>
Nov 24, 2021	OSHA filed an emergency motion before the 6 <sup>th</sup> Circuit to lift the stay 6 <sup>th</sup> Circuit issued the <a href="#">Scheduling Order</a> for the case
Dec 3, 2021	6 <sup>th</sup> Circuit denied OSHA’s request to amend the Scheduling Order on the question of lifting the stay; denied DOJ motion for expedited review on the merits (but held it open); denied motions to transfer case to 5 <sup>th</sup> and DC Circuit
Dec 15, 2021	6 <sup>th</sup> Circuit denied petitions for <i>en banc</i> review
Dec 17, 2021	6 <sup>th</sup> Circuit vacated the 5 <sup>th</sup> Circuit stay <a href="#">OSHA announced it will exercise enforcement discretion</a> on compliance; no citations will be issued until Feb 9 for vaccination or testing provisions and Jan 10 for all other provisions
Jan 7, 2022	Supreme Court to hear emergency hearing on OSHA mandate

**Federal Contractor Mandate**

On September 9, President Biden issued [Executive Order 14042](#) (EO) requiring all federal contractors to mandate COVID-19 vaccinations for their employees. On October 7, the Federal Acquisition Regulation (FAR) Council issued the Deviation Clause to implement the EO. Numerous lawsuits have been filed against the mandate, but the District Court for the Eastern District of Kentucky was the first to issue a substantive decision.

District Court for the Southern District of Georgia	
Date	Activity

Dec 7, 2021	<a href="#">US District Court for the Southern District of Georgia issued nationwide preliminary injunction</a> against the mandate
Dec 9, 2021	Admin appealed to the 11 <sup>th</sup> Circuit
Dec 17, 2021	11 <sup>th</sup> Circuit denied administration's motion to stay, upholding the injunction, but did not rule on the merits
Jan 3, 2022	Admin must file brief with 11 <sup>th</sup> Circuit
Jan 17, 2022	Responses to briefs due
Jan 24, 2022	Replies to the responses due

District Court for the Eastern District of Kentucky	
Date	Activity
Nov 30, 2021	<a href="#">Eastern District of Kentucky issued a preliminary injunction</a> against the mandate; stops enforcement in plaintiff states: KY, OH, and TN
Dec 6, 2021	Admin appealed to the 6 <sup>th</sup> Circuit

District Court for the Middle District of Florida	
Date	Activity
Dec 22, 2021	<a href="#">Middle District of FL issued preliminary injunction</a> against the mandate for contracts in Florida
Dec 29, 2021	Briefs in response to injunction due

District Court for the Eastern District of Missouri	
Date	Activity
Dec 20, 2021	<a href="#">Eastern District of Missouri issued preliminary injunction</a> for plaintiff states: AK, AR, IA, MN, MO, NE, ND, NH, SD, and WY

### CMS Vaccine Mandate for Healthcare Workers

On November 5, the Centers for Medicare and Medicaid Services issued a [rule](#) requiring healthcare workers in facilities that receive Medicare or Medicaid funds be vaccinated against COVID-19 by January 4, 2022. Four lawsuits were filed against CMS challenging the agency's authority to issue the rule. As it currently stands, the rule is in effect in CA, CO, CT, DE, FL, HI, IL, ME, MD, MA, MI, MN, NV, NJ, NM, NY, NC, OR, PA, RI, TN, VT, VA, WA, and WI.

District Court for the Eastern District of Missouri	
Date	Activity
Nov 29, 2021	<a href="#">District Court for the Eastern District of Missouri blocked implementation and enforcement</a> in the 10 states that challenged the rule: AK, AR, IA, KS, MO, NE, NH, ND, SD, WY
	Appealed to the 8 <sup>th</sup> Circuit

Dec 13, 2021	<a href="#">8<sup>th</sup> Circuit denied</a> the admin’s motion to lift the stay in the 10 impacted states
Dec 16, 2021	Admin files <a href="#">emergency application with Supreme Court</a> to review the case and stop the injunctions from the Eastern District of Missouri and Western District of Louisiana
Jan 7, 2022	Supreme Court to hear emergency hearing on CMS mandate

District Court for the Western District of Louisiana	
Date	Activity
Nov 30, 2021	<a href="#">District Court for the Western District of Louisiana issued a preliminary injunction</a> blocking enforcement of the mandate nationwide, except in the 10 states impacted by the Missouri ruling
	Appealed to the 5 <sup>th</sup> Circuit
Dec 15, 2021	<a href="#">5<sup>th</sup> Circuit upheld the injunction</a> in the 14 states involved in the case: AL, AZ, GA, ID, IN, KY, LA, MS, MT, OH, OK, SC, UT, WV; refused to extend it to other states
Dec 16, 2021	Admin filed emergency application with the Supreme Court ( <i>see chart above</i> )

District Court for the Northern District of Florida	
Date	Activity
Nov 20, 2021	Judge ruled against granting a temporary restraining order or preliminary injunction
Nov 23, 2021	Florida filed its appeal and motion for emergency injunction pending the appeal
	Judge declined to enter an emergency injunction but did offer to reconsider the original request for a preliminary injunction
Dec 6, 2021	<a href="#">11<sup>th</sup> Circuit upheld District Court decision</a> and refused to enjoin the rule
Dec 16, 2021	Florida seeks rehearing <i>en banc</i> before the 11 <sup>th</sup> Circuit

District Court for the Northern District of Texas	
Date	Activity
Dec 5, 2021	Case stayed because of the nationwide injunction issued by District Court for the Western District of Louisiana
Dec 15, 2021	Plaintiffs filed for motion of preliminary injunction following 5 <sup>th</sup> Circuit’s decision paring back the nationwide injunction
	<a href="#">District Court granted preliminary injunction</a> against the rule; halts implementation only in TX