

Fifth Circuit Curtails Nationwide Reach of Injunction Against CMS Vaccine Mandate

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By Nikole Mergo and Kamri Barber

On Wednesday, December 15, 2021, the Fifth Circuit Court of Appeals narrowed the scope of the Louisiana District Court's ruling, which originally enjoined CMS's vaccine mandate for health care workers in *all 50 states*. In today's ruling, the Fifth Circuit held the Louisiana District Court lacked constitutional authority to issue a nationwide injunction. As a result, the injunction now only applies to the fourteen states which originally joined in the complaint, leaving healthcare providers in many states again subject to the CMS mandate, at least for the moment.

Q: What States Are Still Covered by the Louisiana District Court Injunction?

A: The fourteen states which initially filed suit against the vaccine mandate are now the only states still covered by the Louisiana District Court injunction. Those states include: Alabama, Arizona, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, Utah and West Virginia.

*As an aside, the states covered by the Missouri District Court injunction are *still* covered by that court's injunction and are unaffected by today's Fifth Circuit Order.

Q: What Does This Mean?

A: In short, there are now *26 states not covered by any injunction* and are now once again subject to the CMS mandatory vaccine requirements. The preliminary injunctions issued by the Louisiana District Court and the Missouri District Court only cover a total of 24 states—the 14 states which filed suit in Louisiana, and the 10 states which filed suit in Missouri, respectively. All other states are not subject to any injunction.

Q: What Will the Legal Landscape Look Like Going Forward?

A: The Fifth Circuit ruling now creates a hodgepodge of enforcement for health care workers in states across the nation. For example, as of today, those health care workers in North Carolina will be required to comply with the CMS vaccine requirements, while those health care workers in South Carolina are not. This inconsistency across state lines clearly demonstrates a need for review by the United States Supreme Court, which is likely to occur sometime in 2022.

Q: What Does This Mean for Health Care Employers Covered by the CMS Rule?

A: Healthcare employers in states still covered by one of the two injunctions are not required to implement any changes at the moment. Those who have chosen to “pause,” may continue to do so in the above-referenced 24 states. However, employers in states that are not covered by either (1) the narrowed Louisiana injunction, or (2) the Missouri injunction, will be required to re-adhere to CMS requirements until the legal process comes to a final disposition.

Nexsen Pruet is prepared to assist employers in navigating the ever-changing COVID-19 vaccine developments. Please let us know if there is anything we can do to help.