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Federal Court Ruling in Rutgers Vaccine Mandate Challenge Is Likely the Tip of the Iceberg

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What You Should Know

- A student at Rutgers University was joined by other plaintiffs in filing a federal lawsuit in response to the university's decision to mandate COVID-19 vaccinations for students.
- The plaintiffs' request for a Temporary Restraining Order against Rutgers while the case is pending was denied.
- Mandatory vaccine policies have generated numerous lawsuits brought by other individuals, including healthcare workers, through the country.
- Decision makers and employers should preemptively consult with legal, financial, insurance and media relations advisors when contemplating the implementation of a mandatory vaccination policy to address potential risks and negative impacts.

In the age of COVID-19 circa 2021, many business institutions and organizations are struggling to strike a balance between individual rights and public safety. A recent ruling by the U.S. District Court for the District of New Jersey in a case involving Rutgers University serves to reinforce the message that mandatory vaccination policies should be drafted with great care, and that decision-makers and their in-house legal teams are well-advised to anticipate and prepare for potential legal challenges and protracted battles in the courtroom.

In the matter *Children's Health Defense Inc. et al. v. Rutgers, the State University of New Jersey et al.*, Rutgers' student Adriana Pinto and other plaintiffs filed suit in federal court against Rutgers University in response to the university's decision to mandate COVID-19 vaccinations for students attending school in the fall of 2021.

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Rutgers' mandatory vaccine policy requires that all students be vaccinated regardless of whether they are attending in-person classes. The policy states that only students enrolled in the university's fully online degree program, or those claiming health or religious reasons, may be granted an exemption from the vaccine policy.

The suit alleges that Rutgers' vaccination policy is "both illegal and unconstitutional" and that it coerces students to accept "an experimental COVID-19 vaccine" as a precondition for returning to campus, thereby violating Ms. Pinto's basic constitutional right to refuse unwanted medical treatment. More specifically, the plaintiffs argue that the university's policy is unconstitutional because it mandates vaccination for all students regardless of whether those students will be physically present on campus or will be attending school virtually.

Ms. Pinto was suspended from accessing her student account and from attending an online course she had registered for after refusing to be vaccinated against COVID-19. With the support of the non-profit anti-vaccination organization Children's Health Defense Inc., Ms. Pinto challenged her suspension by filing a complaint against Rutgers in federal court and seeking urgent relief in the form of a Temporary Restraining Order (TRO) to stop Rutgers from suspending her and from requiring that she be vaccinated.

How the Court Ruled

In denying the plaintiffs' TRO request, U.S. District Judge Zahid N. Quraishi evaluated the four standard criteria for granting a TRO, and found:

- The plaintiffs were not likely to succeed on the merits of their case because the rights of individuals to informed consent and to refuse unwanted medical treatment are not absolute.
- The plaintiffs did not establish that they would suffer irreparable harm because they waited five months after Rutgers announced its vaccination policy to seek the TRO, a self-inflicted delay that the Court viewed as evidence that "speedy relief is not needed."
- The balance of the equities favored Rutgers because the university might well suffer "administrative harm" in "time, costs, and efforts" if required to develop and adopt policies and make new procedures anytime the plaintiff and other non-vaccinated students appeared physically on campus in order to protect other members of the Rutgers' community.
- The public interest favored Rutgers given the severity of the COVID-19 pandemic and the number of cases, establishing a relationship between Rutgers' policy and the need to protect public health. Therefore, the university's vaccination policy was reasonably necessary to safeguard that public interest.

Judge Quraishi's denial of the request for urgent relief is not the end of this case, which will proceed through discovery and then to trial as any other lawsuit would. It should also be noted that this case is not an anomaly, as mandatory vaccine policies have generated a flurry of additional lawsuits brought by other individuals, including healthcare workers, through the country.

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Next Steps

In light of the predictable reaction to mandatory vaccination policies, it is advisable for any employer contemplating the implementation of mandatory vaccination policies to consider the following steps prior to initiating such a policy:

- C-Suite executives and other decision makers should communicate with their finance and legal advisors about the likely claims arising out of an employee's refusal to be vaccinated and should identify potential insurance coverages that may be available in the event of claims such as those asserted in the Rutgers litigation.
- Employers should work closely with their public relations advisors to prepare for and respond to negative media attention that may result from the implementation of mandatory vaccine policies.
- Employers, especially healthcare providers and hospitals, should prepare for a shortage of employees, such as nurses and other caregivers, as a result of an exodus of a segment of its workforce or employment terminations related to vaccination status. Workers who refuse to be vaccinated will have to be replaced and there are real economic costs associated with having to hire and re-train a substantial number of new employees.
- Organizations such as universities must consider the economic costs associated with student suspension for refusing to be vaccinated, as those students may have tuition reimbursement rights and/or seek damages if they cannot graduate on time.

The bottom line is that a business or institution's decision to implement a mandatory vaccine policy may impact substantial areas of its business, including negative media attention and perhaps uninformed criticism by those who may not be aware of the legal implications of making vaccinations mandatory.

Please contact the authors of this Alert, **James A. Robertson** and **Ghatul Abdul**, for additional information or to discuss your specific circumstances. Mr. Robertson is Chair of the firm's Healthcare Department, of which Ms. Abdul is a member.

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