

# CMS Vaccine Mandate – On Again (Sort Of)?

## Labor & Employment Law Update

By Suzannah Wilson Overholt on December 16, 2021



In the ongoing saga of the federal government's attempts to impose vaccine mandates on certain sectors, on Wednesday, December 15, the United States Court of Appeals for the Fifth Circuit concluded that the nationwide injunction issued by a Louisiana District Court was overbroad and could only apply to the 14 states

that were plaintiffs in the lawsuit. The court stayed the injunction for the 26 states that were not parties to the lawsuit before it or covered by the 10-state injunction issued by the Eastern District of Missouri on November 29. Therefore, the CMS vaccine mandate for health care workers is now enjoined in 24 states but could be enforced in 26 states.

What this means is that the CMS mandate **IS NOT** in effect for the following 24 states:

- Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota and New Hampshire (due to injunction issued in Missouri); and
- Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky and Ohio (due to Fifth Circuit opinion).

The 26 states in which the CMS mandate could be enforced are as follows:

- California
- Colorado
- Connecticut
- Delaware
- Florida

- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- Oregon
- Pennsylvania
- Rhode Island
- Tennessee
- Texas
- Vermont
- Virginia
- Washington
- Wisconsin

What remains to be seen is when (or whether) CMS will now enforce the mandate in these 26 states. On December 2, CMS instructed state surveyors not to survey providers for compliance with the CMS vaccine mandate requirements, which equated to not enforcing the mandate. CMS will now need to change its instructions for enforcement efforts to begin – and that has not occurred yet.

Because of the ongoing uncertainty, entities covered by the CMS mandate should continue to be ready to comply with it. However, further guidance should be issued by CMS before compliance is required. We will continue to keep you updated.

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