

Yes, Your Employer Can Require You To Be Vaccinated, According to a Federal Judge in Texas

Labor & Employment Law Update

By John Hayes on June 14, 2021



A federal judge in Texas on June 12, 2021 dismissed a lawsuit brought by Texas health care workers challenging their hospital's COVID-19 vaccine mandate. The scathing opinion by U.S. District Judge Lynn N. Hughes left no doubt that he believed

the claims of the 117 plaintiffs were without merit.

The lawsuit was brought by employees of Houston Methodist Hospital, who had refused the vaccine, after the hospital in April announced a policy requiring vaccination of all employees. In early June, over 170 employees of the hospital were suspended for two weeks without pay over their decision to refuse getting the COVID-19 vaccine. If these employees did not get vaccinated within two weeks then they would be terminated. At the time of the filing, almost 25,000 Hospital employees had complied with the vaccination requirement, and approximately 285 employees had received medical or religious exemptions.

The employees refusing the vaccine claimed that the policy of the hospital requiring the COVID-19 vaccine of its employees was an effort to coerce them into becoming test subjects for an untested and unreliable vaccine. Echoing a refrain made by many who are refusing the vaccine, the plaintiffs argued that the lack of full approval by the Food and Drug Administration (FDA), justified their refusal to get vaccinated. While not yet granting full approval for the three vaccines in the United States, the FDA has granted emergency use authorization for the vaccines, and approximately 173 million Americans have received at least one dose, with over 143 million being fully vaccinated.

In his opinion, Judge Hughes found that the plaintiffs were not “coerced” to get the vaccine, and that public policy clearly supports widespread inoculation efforts. Specifically, the court said that lead plaintiff and nurse Jennifer Bridges’

claims that the vaccines are “experimental and dangerous” were “false” and “irrelevant.” He went on to say Bridges’ argument that the vaccine requirement equates to medical experimentation in Nazi concentration camps was “reprehensible.”

Further explaining that the employees were not coerced, Judge Hughes stated that the hospital “is trying to do their business of saving lives without giving them the COVID-19 virus. It is a choice made to keep staff, patients and their families safer. Bridges can freely choose to accept or refuse a COVID-19 vaccine; however, if she refuses, she will simply need to work somewhere else.” Calling it “all part of the bargain” between a worker and their employer, the court stated “every employment includes limits on the worker’s behavior in exchange for his remuneration.”

While the focus of the opinion was on Texas law regarding wrongful discharge, it appears to be the first of its kind regarding vaccine mandates, and has implications nationwide. Judge Hughes cited to the Equal Employment Opportunity Commission’s (EEOC) updated May 28, 2021 guidance that employers can require employees to be vaccinated against COVID-19, subject to reasonable accommodations for employees with disabilities or sincerely held religious beliefs that preclude vaccination. He further stated that while this guidance is not binding “it is advice about the position one is likely to meet at the Commission.”

The lawyer for the plaintiffs stated he planned to pursue an appeal.

Ultimately, the decision whether or not to mandate vaccination of its employees is up to the individual employer. While some hospital systems and other health care institutions such as nursing homes and home health care providers in the country are moving to require COVID-19 shots, many private employers have not yet taken that step. And although the EEOC has said employers can require vaccines, subject to certain exemptions, there still remain questions on the legality of doing so, as evidenced by this lawsuit. Any workplace vaccination policy—whether a mandate or one that provides incentives to get the shot—should be carefully considered in advance, ideally vetted by experienced employment counsel.

We are continuing to monitor this evolving situation, and will update our blog with any new developments.

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