



## Court Halts OSHA Rule on Mandatory Vaccination Policies

Last week we reported that the Fifth Circuit Court of Appeals issued a [temporary stay](#) (first Fifth Cir. ruling) preventing the OSHA rule requiring employers with 100 or more employees to adopt a mandatory vaccine policy from being enforced. At that time, the Court issued its temporary stay pending further judicial review. Since then, the Court completed the next phase of its review and again stayed in enforcement of the rule. In its [latest ruling](#) (second Fifth Cir. ruling), the **Court ordered that OSHA take no steps to implement or enforce the mandate until further court order.**

The Court pointed out that OSHA has refused to implement emergency temporary standards, such as the recent vaccine mandate, on several occasions. In fact, in its 55-year history, OSHA has issued only 10 emergency temporary standards. Several of those were successfully challenged in court and only one survived. Emergency temporary standards, in general, have been described as an 'unusual response' to 'exceptional circumstances.' Thus, courts have uniformly observed that OSHA's authority to establish emergency temporary standards is an 'extraordinary power' that is to be 'delicately exercised' in only certain 'limited situations.'

The Court called this mandate "fatally flawed" and one that grossly exceeds OSHA's authority. It further criticized the mandate, writing: "[R]ather than a delicately handled scalpel, the Mandate is a one-size fits-all sledgehammer that makes hardly any attempt to account for differences in workplaces (and workers) that have more than a little bearing on workers' varying degrees of susceptibility to the supposedly "grave danger" the Mandate purports to address." The Court continued: "The Mandate is staggeringly overbroad. Applying to 2 out of 3 private-sector employees in America, in workplaces as diverse as the country itself, the Mandate fails to consider what is perhaps the most salient fact of all: the ongoing threat of COVID-19 is more dangerous to some employees than to other employees. All else equal, a 28 year-old trucker spending the bulk of his workday in the solitude of his cab is simply less

vulnerable to COVID-19 than a 62 year-old prison janitor. Likewise, a naturally immune unvaccinated worker is presumably at less risk than an unvaccinated worker who has never had the virus. The list goes on, but one constant remains—the Mandate fails almost completely to address, or even respond to, much of this reality and common sense.”

For now, OSHA is prohibited from enforcing the vaccine mandate rule, as the agency [recently announced](#) (very quietly in small print) on its website. However, this is not yet the end of the legal battle. The final phase of the Court’s review will determine whether OSHA will be permanently prevented from implementing and enforcing the rule. Of course, we will keep you apprised of future developments.

***If you have concerns about this or any other workplace or litigation issue, please contact David Ryan at [david.ryan@ryan-ryan.net](mailto:david.ryan@ryan-ryan.net) or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).***