

CMS VACCINE MANDATE UPDATES

January 5, 2022

On December 28, 2021, the Centers for Medicare and Medicaid Services (“CMS”) [updated its policy](#) regarding vaccine mandates. As [previously discussed](#), this announcement follows multiple legal challenges that have left employers uncertain whether and when CMS’s vaccine mandate will be enforced. Meanwhile, the Supreme Court has agreed to hear oral arguments regarding enforcement of both the CMS and Department of Occupational Safety and Health Administration (“OSHA”) vaccine mandates.

VACCINE MANDATE

Following decisions by the Fifth, Eighth, and Eleventh Circuit Courts of Appeals, as well as a decision out of the U.S. District Court for the Northern District of Texas, there is currently an injunction against the CMS vaccine mandate in the following 25 states: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming.

CMS has now announced that it will continue to pursue its mandate in the 25 states where an injunction is not in place (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, Vermont, Virginia, Washington, and Wisconsin), as well as in the District of Columbia and U.S. territories.

Due to the prior nationwide injunction, CMS will begin monitoring and enforcing compliance with its vaccine mandate on a modified timeline from the one initially announced. Under Phase I, covered facilities will need to ensure that they have developed policies and procedures regarding COVID-19 vaccinations by **January 27, 2022**. Additionally, by this date all covered employees must have received their first vaccination, have been granted an exemption, have an exemption request pending, or have been granted a temporary delay in vaccination, as recommended by the CDC because of clinical precautions and considerations.

Phase II, which goes into effect on **February 28, 2022**, requires that covered individuals (unless otherwise exempted or granted a temporary delay) have completed a primary vaccination series. A primary vaccination series is defined as a dose of a single-dose vaccine (such as the Johnson & Johnson vaccine) or all required doses of a multi-dose vaccine

(such as the Pfizer-BioNTech or Moderna vaccines). For purposes of this deadline, CMS does not require that individuals have completed their 14-day post-vaccination period necessary to be considered fully vaccinated.

Additional details regarding the CMS vaccine mandate for covered entities may be found [here](#).

U.S. SUPREME COURT

The [U.S. Supreme Court](#) is scheduled to hear arguments on CMS's and OSHA's vaccine mandate on **January 7, 2022**. Specifically, the Court will consider whether to allow CMS and OSHA to enforce their respective mandates while the underlying litigation proceeds. Currently, OSHA has two upcoming vaccine-related compliance deadlines. By **January 10, 2022**, covered employers must develop a number of policies and procedures and by **February 9, 2022**, employees must be vaccinated or tested for COVID-19 at least weekly or within seven (7) days of returning to work.

While awaiting the Supreme Court's decisions, covered employers should prepare to comply with CMS's and OSHA's vaccine mandates to the extent feasible.

If you have questions or need assistance regarding compliance with these vaccine requirements and other employment laws, please contact a member of Hancock Daniel's [Labor & Employment](#) team. For any other concerns arising from the pandemic, please contact a member of our [COVID-19 Task Force](#).

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