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CMS and OSHA Vaccine Mandate Updates

Federal courts have spoken on the CMS and OSHA vaccine mandates and at least partially reinstated each of them.

OSHA

The OSHA vaccine mandate, however, has been reinstated. The Sixth Circuit upheld the OSHA Emergency Temporary Standard – which means the ETS is effective. OSHA updated the deadlines in light of the reinstatement – it said it would not issue citations for noncompliance until January 10 for the former December 6 requirements and not until February 9 for the weekly testing requirement, as long as employers are making “reasonable, good-faith efforts to come into compliance.”

The OSHA mandate required businesses with 100 or more employees to ensure their workers were fully vaccinated by the deadline or submit a negative COVID-19 test weekly to enter the workplace. Unvaccinated employees were required to start wearing masks indoors.

CMS

The CMS vaccine mandate was stayed at the end of November, but the Fifth Circuit decided that the injunction would not apply nationwide, but would only apply to the states that challenged the mandate. Enforcement of the CMS mandate is currently still on hold in Arkansas, along with several other states. The CMS mandate is being challenged in several other states and courts.

Healthcare employers, even in states where the CMS mandate is stayed, may still be subject to the OSHA ETS that was reinstated. Healthcare employers should also continue to comply with the June 21, 2021 ETS from OSHA that requires healthcare employers to take measures that mitigate the transmission of COVID-19.

If you have any questions, please contact Jenny Teeter or Brianna Cook.

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