

NEWS & INSIGHTS

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# Stay on COVID-19 vaccination mandate remains in place as case moves to 6th Circuit Court of Appeals

BY: [RICHARD L. HACKMAN](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

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*The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.*

On November 13, 2021, the 5th Circuit reaffirmed its stay of the Biden Administration's COVID-19 vaccine mandate

for private employers. The Court ordered that OSHA shall “take no steps to implement or enforce the Mandate until further court order.” The appeals court initially issued an emergency stay on enforcement of the rule on November 6 before affirming that decision last week.

A number of states and employers initially moved to stay the mandate and collectively filed lawsuits in each of the twelve circuit courts nationwide. These similar lawsuits filed across the country triggered the Multicircuit Petition Statute, 28 U.S.C. 2112(a), which requires the Judicial Panel on Multidistrict Litigation (JPML) choose randomly one appellate court to hear all cases. The 6th Circuit was selected and will now decide all issues related to the mandate. The Court, which covers Tennessee, Kentucky, Ohio, and Michigan, is comprised of 11 Republican-appointed judges, with five appointed by Democratic presidents.

In an effort to expedite the matter, petitions for an initial hearing “*en banc*” were filed with the 6th Circuit. The legal term *en banc* refers to the hearing of a case by the entire bench, or all of the judges of a court, rather than a panel of a selected few judges. Typically, most cases are tried before a single judge or (as contemplated in this case) before a three-judge panel in the circuit court of appeals. Granting an *en banc* petition immediately would accelerate determination of the matter since it would eliminate the need for a subsequent petition for *en banc* rehearing from a three-judge panel. However, petitions for initial hearings *en banc* are rarely granted. The court has called for a response from OSHA to the petitions by November 30, 2021.

According to its website, OSHA announced it would “suspend activities related to the implementation and enforcement of the [Emergency Temporary Standard] pending future developments in the litigation.” However, the Biden administration is still urging businesses to require their employees to get vaccinated and has indicated they still believe January 4, 2022 to be the compliance deadline.

While it seems unlikely this matter will be resolved imminently, or that the mandate will pass legal muster, employers should be prepared for the implications in the event it is deemed enforceable.

### *Seek legal advice before implementing policy mandates or responding to enforcement action*

Knowledgeable legal counsel can be critical for navigating today’s challenging regulatory environment for employers. Saxton & Stump’s [Labor and Employment](#) team, led by attorney [Richard L. Hackman](#), is available to assist and has extensive experience representing and counseling entities of all sizes and types including healthcare organizations, manufacturers, retailers and service industry businesses. Saxton & Stump also provides businesses with legal services for their industry whether it is [Construction](#), [Hospitality](#), [Healthcare](#), [Senior Care Services](#) or [Banking and Financial Services](#). Our focus is helping our clients achieve their business goals.

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