

Federal Appeals Court Affirms Block on Vaccine Mandate for Employers, Slams Biden Administration for Using OSHA as a 'Work-Around' to Force Vaccines



A federal appeals court blocked the Occupational Safety and Health Administration's (OSHA) [emergency temporary standard](#) (ETS) requiring businesses with 100 or more employees to mandate [COVID-19 vaccinations](#) or weekly testing by Jan. 4, stating the rule "grossly exceeds" the authority of the occupational safety agency that issued it.

In a [22-page opinion](#) issued on Friday, a three-judge panel on the U.S. Court of Appeals for the Fifth Circuit, unanimously held that a group of challengers to the COVID vaccine mandate, issued by the Biden administration, was likely to succeed and barred the government from enforcing it.

In the ruling, Judge Kurt Engelhardt said petitioners' challenges to the mandate showed a great likelihood of success on the merits, weighing critically in favor of a stay – and if not stayed, the mandate would cause irreparable harm, as it “threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their jab(s).”

Engelhardt said companies seeking a stay in the case would also be irreparably harmed if it were not granted “whether by the business and financial effects of a lost or suspended employee, compliance and monitoring, costs associated with the mandate, the diversion of resources necessitated by the mandate or by OSHA’s plan to impose stiff financial penalties on companies that refuse to punish or test unwilling employees.”

Engelhardt also acknowledged the states’ interest in “seeing their constitutionally reserved police power over public health policy defended from federal overreach.”

In contrast,” a stay will do OSHA no harm whatsoever,” Engelhardt wrote. “Any interest OSHA may claim in enforcing an unlawful (and likely unconstitutional) ETS is illegitimate.”

Engelhardt said the mandate “imposes a financial burden upon private employers by deputizing their participation in OSHA’s regulatory scheme, exposes them to severe financial risk if they refuse or fail to comply and threatens to decimate their workforces (and business prospects) by forcing unwilling employees to take their shots, take their tests, or hit the road.”

Engelhardt said the “mere specter of the mandate has contributed to untold economic upheaval in recent months.”

“Of course, the principles at stake when it comes to the mandate are not reducible to dollars and cents,” Engelhardt wrote. “The public interest is also served by maintaining our

constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions – even, or perhaps particularly when those decisions frustrate government officials.”

Engelhardt said the mandate is fatally flawed:

“Indeed, the Mandate’s strained prescriptions combine to make it the rare government pronouncement that is both overinclusive (applying to employers and employees in virtually all industries and workplaces in America, with little attempt to account for the obvious differences between the risks facing, say, a security guard on a lonely night shift and a meatpacker working shoulder to shoulder in a cramped warehouse) and underinclusive (purporting to save employees with 99 or more coworkers from a “grave danger” in the workplace, while making no attempt to shield employees with 98 or fewer coworkers from the very same threat).

“The Mandate’s stated impetus—a purported “emergency” that the entire globe has now endured for nearly two years, and which OSHA itself spent nearly two months responding to—is unavailing as well. And its promulgation grossly exceeds OSHA’s statutory authority.”

Engelhardt said the Biden Administration is attempting to find a “work-around” to federally mandate vaccines and described the mandate as a “one-size-fits-all sledgehammer” with “varying degrees of susceptibility to the supposedly grave danger the mandate purports to address.”

According to [The New York Times](#), in its filing asking the Fifth Circuit to withdraw its stay this week, the Justice Department argued that requiring large employers to force their workers to get vaccinated or submit to weekly testing was well within the authority granted by Congress to OSHA, and blocking the mandate “would likely cost dozens or even hundreds of lives per day, in addition to large numbers of

hospitalizations, other serious health effects and tremendous costs.”

The 5th circuit was unsympathetic. They [called out the Biden Administration](#) for its inconsistencies, its use of an “emergency temporary standard” to federally mandate COVID vaccines, claimed the rule was both underinclusive and overinclusive, that OSHA had exceeded its authority, that the federal government was attempting to encroach on state police powers and said the rule completely ignores the realities of natural immunity.

“The underinclusive nature of the mandate implies that the mandate’s true purpose is not to enhance workplace safety, but instead to ramp up vaccine uptake by any means necessary,” Englehardt wrote.

“Today’s decision is just the beginning of the process for review of this important OSHA standard,” Dena Iverson, a Justice Department spokeswoman [said in a statement](#). “The department will continue to vigorously defend the standard and looks forward to obtaining a definitive resolution following consolidation of all of the pending cases for further review.”

The Fifth Circuit does not have the final say. There are challenges to the mandate in other circuits, and the cases will be consolidated and could end up in a different jurisdiction that views things differently. The case will likely reach the Supreme Court, which is expected to decide the matter.