



SCWA Legislative Update

November 22, 2021



Happy Thanksgiving from SCWA!



OSHA Large Employer Vaccine Mandate Now Faces Uphill Battle

- The Occupational Safety and Health Administration (OSHA) has issued an Emergency Temporary Standard (ETS) that required employees of employers with 100 or more employees either to get vaccinated or to test negative on a weekly basis.
- However, the U.S. Circuit Court of Appeals for the Fifth Circuit has issued a nationwide stay blocking the ETS from taking effect. The court ordered OSHA to "take no steps to implement or enforce the [ETS] until further court order." In recognition of this ruling, OSHA has stated that it has suspended all activities relating to the implementation and enforcement of the ETS pending further litigation.
- Challenges to the ETS have been filed in multiple federal circuit courts across the country. When there are multiple filings like these, a multi-circuit "lottery" system is utilized for purposes of consolidation and clarity. That lottery has chosen the Sixth Circuit, which is generally viewed as a favorable draw for OSHA vaccine mandate's challengers. We will provide updates as the Sixth Circuit issues any relevant orders.
- Regardless of the outcome in the Sixth Circuit, the U.S. Supreme Court will likely have the final word.

To be clear, the ETS in its entirety is currently blocked from enforcement on a nationwide

basis. If that changes, we will send out an alert.



Healthcare CMS Vaccine Mandate Update

The Centers for Medicare & Medicaid Services (CMS) has released a rule (“CMS Rule”) requiring Medicare – and Medicaid – certified healthcare providers and suppliers to have all employees fully vaccinated.

Coverage

- The CMS Rule applies to employees regardless of whether their positions are clinical or non-clinical and includes employees, students, trainees, and volunteers who work at a covered facility.
- The CMS Rule applies only to virtually all healthcare entities regardless of the number of employees that receive Medicare or Medicaid funding or reimbursement. This includes, but is not limited to, hospitals, long-term care facilities, home health agencies, and community mental health centers. Importantly, the CMS Rule does not apply to other healthcare entities, such as physician offices, that are not subject to certification health and safety standards.

Vaccine Requirements

- The CMS Rule does not allow for testing in lieu of vaccination (unless considered as an accommodation to an approved medical or religious request for exemption).
- Covered employers must establish a policy ensuring all eligible staff have, by December 5, 2021, received the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine.
- Covered employers must require that, by January 4, 2022, all affected staff be fully vaccinated, except for staff granted medical and religious exemptions. For purposes of compliance with the CMS Rule, individuals who received the second dose by January 4, 2022, will meet the vaccination requirement.
- Covered employers must require documentation from employees to prove vaccination, even if an employee has previously attested to their vaccination status.

Religious and Medical Exemptions

- Staff who claim a religious exemption must be required to provide a written statement that they have a sincerely held religious belief that prevents them from receiving the vaccine. No additional verification of the religious belief can or should be required.
- Staff who claim a medical exemption must be required to provide a written statement that is supported by medical documentation that they have a medical or mental health condition that prevents them from receiving the vaccine.
- Religious and Medical Exemption forms are available at no charge to retainer clients.

The CMS Rule expressly states that it preempts any inconsistent state or local laws, including laws that ban or limit an employer’s authority to require vaccination or proof of vaccination status.

Several states and entities have filed suit in federal appellate courts seeking to have those courts stop the CMS Rule from being enforced.

As of November 17, 2021, the CMS Rule has not been blocked from enforcement. It is not anticipated that the CMS Rule will be blocked from enforcement.



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