

Court Reverses Decision on Biden Employer Vaccine Mandate

A federal appeals court panel on Friday allowed President Joe Biden's COVID-19 vaccine mandate for larger private employers to move ahead, reversing a previous decision on a requirement that could affect some 84 million U.S. workers.

The 2-1 decision by a panel of the 6th U.S. Circuit Court of Appeals in Cincinnati overrules a decision by a federal judge in a separate court that had paused the mandate nationwide.

The mandate from the U.S. Occupational Safety and Health Administration was to take effect Jan. 4. With Friday's ruling, it's not clear when the requirement might be put in place, but the White House said in a statement that it will protect workers: "Especially as the U.S. faces the highly transmissible Omicron variant, it's critical we move forward with vaccination requirements and protections for workers with the urgency needed in this moment."

Republican state attorneys general and conservative groups said they would appeal Friday's decision to the U.S. Supreme Court.

Twenty-seven Republican-led states joined with conservative groups, business associations and some individual businesses to push back against the requirement as soon as OSHA published the rules in early November. They argued the agency was not authorized to make the emergency rule, in part because the coronavirus is a general health risk and not one faced only by employees at work.

The panel's majority disagreed.

"Given OSHA's clear and exercised authority to regulate viruses, OSHA necessarily has the authority to regulate infectious diseases that are not unique to the workplace," Judge Julia Smith Gibbons, who was nominated to the court by former President George W. Bush, a Republican, wrote in her majority opinion.

"Vaccination and medical examinations are both tools that OSHA historically employed to contain illness in the workplace," she wrote.

Gibbons noted that the agency's authority extends beyond just regulating "hard hats and safety goggles." She said the vaccine requirement "is not a novel expansion of OSHA's power; it is an existing application of authority to a novel and dangerous worldwide pandemic."

She was joined in the majority decision by Judge Jane Branstetter Stranch, an appointee of former President Barack Obama, a Democrat.

The case was consolidated in the 6th circuit, which is dominated by Republican-appointed judges. Earlier this week, the circuit's active judges rejected a move to have the entire panel consider the case, on an 8-8 vote.

The dissent in Friday's ruling came from Judge Joan Larsen, an appointee of former President Donald Trump, who said Congress did not authorize OSHA to make this sort of rule and that it did not qualify as a necessity to use the emergency procedures the agency followed to put it in place.

Larsen also argued that vaccinated workers "do not face 'grave danger' from working with those who are not vaccinated."

Arkansas Attorney General Leslie Rutledge, a Republican, said she would ask the U.S. Supreme Court to block the order. At least two conservative advocacy groups said they had already appealed to the nation's highest court.

"The Sixth Circuit's decision is extremely disappointing for Arkansans because it will force them to get the shot or lose their jobs," Rutledge said.

South Carolina Attorney General Alan Wilson, who also is chairman of the Republican Attorneys General Association, said in a Twitter message Friday that he was confident the mandate could be stopped.

The vaccine requirement would apply to companies with 100 or more employees and would cover about 84 million workers in the U.S. Employees who are not fully vaccinated would have to wear face masks and be subject to weekly COVID-19 tests. There would be exceptions, including for those who work outdoors or only at home.

The administration has estimated that the rule would save 6,500 lives and prevent 250,000 hospitalizations over six months. On Friday, the U.S. Department of Labor, which includes OSHA, said the 6th circuit's ruling will allow the agency to implement "common-sense, science-based measures to keep workers safe and healthy during a deadly pandemic."

The vaccine rule for private employers is separate from other vaccine mandates announced by the Biden administration that apply to federal government contractors and workers in health care facilities that receive funding from Medicaid or Medicare. Those rules also are under assault from conservatives and have been paused in at least some parts of the country.