

‘Reconsider’ Is Verdict From Circuit Court Judge on Airline Vaccine Mandate

The 5th U.S. Circuit Court of Appeals ruled 2-1 yesterday that the lower court must reconsider its decision not to block United Airlines from enforcing a COVID-19 shot mandate for employees that requires them to choose between getting vaccinated in violation of their religious beliefs or going on unpaid leave.

Thursday’s ruling returns the case to U.S. District Judge Mark Pittman in Texas. In November, Judge Pittman rejected a request for an injunction to block United from placing employees on unpaid leave while the court considers the case finding shows they failed to “show they would suffer imminent, irreparable harm.”

Yesterday, Judges Jennifer Walker Elrod and Andrew S. Oldham ruled United’s policy forces employees to choose “between pay and adhering to religious convictions.” The majority of the three-member panel sent it back for “consideration of the remaining preliminary injunction factors,” finding that the employees who remain on unpaid leave are “actively being coerced to violate their religious convictions,” which is an irreparable harm.

The appeals court wrote, “United has presented plaintiffs with two options: violate their religious convictions or lose all pay and benefits indefinitely. That is an impossible choice for plaintiffs who want to remain faithful but must put food on the table. In other words, United is actively coercing employees to abandon their convictions. Indeed, at a town-hall meeting, United’s CEO revealed United’s sentiments towards parties like plaintiffs. He noted that ‘very few’ religious

exemptions would be granted. And he warned that any employee who 'all the sudden decid[ed], "I'm really religious" would be putting [her] job on the line' by requesting an accommodation. Of course, even those who successfully requested a religious exemption were deprived of all meaningful employment benefits by being placed on indefinite unpaid leave. Thus, plaintiffs are continually subjected to a coercive choice between pay and adhering to religious convictions."

United Airlines became the first major U.S. carrier to mandate the COVID shots for its approximately 67,000 employees, and now the airline is facing a shortage of pilots.

Last August, Liberty Counsel sent a demand letter to United Airlines on behalf of scores of airline employees with religious exemptions who were told they must get the COVID shots to receive vaccination by Sept. 27, 2021, or face termination. However, instead of legally accommodating their religious exemptions, the airline company is using administrative obstacles such as asking personal and theological questions that are unlawful.

In a Senate hearing last December, United Airlines CEO Scott Kirby stated, "We have almost 100 airplanes effectively grounded right now—regional aircraft, because there's not enough pilots to fly them, which means we just can't, at the moment, fly to all the small communities that we would like to."

Kirby also defended a decision to mandate the shots for employees. He stated about 200 employees have been fired, including six pilots, and 80 are on unpaid leave out of about 13,000.

However, neither the airline nor the union seem to be concerned with safety for their employees and passengers. For example, in the letter of agreement between United Airlines and the pilots regarding COVID vaccinations, it admits that

pilots could become disabled from the injections: "If a pilot suffers a medically-documented adverse reaction to COVID vaccination that prevents the pilot from exercising the privileges of a First Class Medical Certificate, the Company shall provide Company-paid drops (PDCP) until such time as the Pilot is able to exercise the privileges of a First Class Medical Certificate. Such period shall not exceed ninety (90) days." The LOA goes on to say that if the pilot's disability exceeds 90 days, the pilot can file for long-term disability.

Liberty Counsel founder and Chairman Mat Staver said, "This is a good decision by the appeals court since United Airlines cannot coerce employees to choose between their career or adhering to their religious convictions. United is now feeling the financial effects of not accommodating religious exemptions for its employees. United employees can safely work without the COVID shots. However, the airline is violating federal and state law and jeopardizing the health and safety of their employees and passengers by pressuring them to get the COVID shots or be terminated." {eo}

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