

Case dismissed: Employees lose challenge to mandatory vaccine policy



Miriam L. Rosen | Monday, June 14, 2021

The issue of mandatory vaccines has been a sensitive one for employers. Although the EEOC cleared the way for employers to mandate vaccines in its Technical Assistance guidance, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, most employers have taken the route of strongly encouraging rather than mandating vaccines. Now, with the rate of vaccines leveling off, employers are re-thinking that approach. A Texas federal court's [recent decision](#) dismissing a challenge to an employer's vaccine requirement may provide just the legal support some employers need to implement a vaccine mandate.

Hospital mandates vaccines

On April 1, 2021, Houston Methodist Hospital ("Hospital") announced a policy requiring its 26,000 employees to be fully vaccinated against COVID-19 by June 7. Consistent with EEOC guidance, the Hospital's policy contained exemptions for workers with sincerely held religious beliefs and certain medical conditions, including pregnancy. According to a FAQ on the Hospital's website in April, employees who were not vaccinated by the specified date faced "suspension and eventual termination."

Employees challenge vaccine mandate

While the vast majority of the Hospital's employees were vaccinated, a vocal group protested the mandate. At the end of May, a group of employees filed a lawsuit in federal court challenging the Hospital's authority to mandate the vaccine.

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The lawsuit contained various allegations essentially asserting that the employees would suffer a “wrongful termination” if they refuse to be vaccinated and that the vaccine requirement violated “public policy” because the vaccines are experimental and dangerous. The suit claimed that the Hospital was “forcing its employees to be human ‘guinea pigs’ as a condition for continued employment.” The suit also claimed that the hospital’s mandate violated the Nuremberg Code of 1947 and likened the vaccine mandate to Nazi medical experimentation on concentration camp prisoners.

The court’s decision

On June 12, U.S. District Judge Lynn Hughes put a swift end to the case finding that the Hospital’s mandatory vaccine policy did not illegally force employees to receive vaccines in order to keep their jobs.

In a short five page opinion, the court dismantled the employees’ “wrongful termination” and violation of public policy claims noting that Texas law does not recognize a public policy exception to “at-will” employment. However, “if it did the injection requirement is consistent with public policy.” The court went on to note the [EEOC’s May 28 guidance](#), that “[e]mployers can require employees to be vaccinated against COVID-19 subject to reasonable accommodations for disabilities and sincerely help religious beliefs.”

The court also quickly dispatched the employees’ assertion that the COVID-19 vaccines’ emergency use authorization somehow prohibited the mandatory vaccine policy. The court held that the emergency use authorization confers powers on the Secretary of Health and Human Services in an emergency, but does not apply to private employers.

The court also took aim at the employees’ attempt to rely on the Nuremberg Code stating first that the Code applies to governments, not private employers like the Hospital. Moreover, the court took the employees to task for comparing the COVID-19 vaccine to the Nazi’s medical experiments, noting:

Equating the injection requirement to medical experimentation in concentration camps is reprehensible. Nazi doctors conducted medical experiments on victims that caused pain, mutilation, permanent disability, and in many cases, death.

Finally, the court rejected the employees’ assertion that they were being “coerced” into receiving vaccines. The court recognized that the Hospital made a choice to require vaccines to keep “staff, patients and their families safer.” Directly addressing the claims of coercion, the court noted that the employees also had a choice to make:

An employee “can freely choose to accept or refuse the COVID-19 vaccine; however, if [the employee] refuses, [the employee] will simply need to work somewhere else.

If a worker refuses an assignment, changed office, earlier start time, or other directive, he may be properly fired. Every employment includes limits on the worker’s behavior in exchange for remuneration. That is all part of the bargain.

With all the employees’ assertions dispatched, ***case dismissed***.

An appeal is expected

An attorney representing the employee group promptly pledged to appeal. According to the employees’ attorney, “[t]his is just one battle in a larger war to protect the rights of employees to be free from being forced to participate in a vaccine trial as a condition for employment.”

Employer takeaways

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For employers considering a mandatory vaccine policy, the Houston Methodist Hospital case provides lessons on how to implement such a policy.

- First, the Hospital gave employees notice of the requirement, provided resource information, and offered to provide the vaccines at its expense. In addition, the Hospital's leadership showed support for the policy by stepping up to be vaccinated
- The Hospital provided a process for employees with disabilities and sincerely held religious beliefs to receive accommodations and exemptions.
- The Hospital made the consequences of refusing to receive the vaccine clear and it was consistent in implementing those consequences.

Implementing a mandatory vaccine policy is a difficult decision for employers with many competing factors to consider. For employers who choose that option, the Houston Methodist Hospital's policy provides a practical model for the implementation process and the court's decision provides the confirmation that the policy is permissible.

McDonald Hopkins' Labor & Employment Law Team will continue to keep employers updated on COVID-19, vaccine issues, and return to office developments. Please contact your McDonald Hopkins employment lawyer with any questions.



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