

## COVID-19 Vaccination Mandates – Recent Cases

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Please see below a brief listing of available, reported or pending cases in the U.S. focused on COVID-19 vaccination mandates based on Westlaw, LEXIS, or Bloomberg searches conducted initially on April 15, 2021, and supplemented by periodic updates. Multiple additional cases are likely filed within lower courts currently which will lead to forthcoming decisions in the weeks ahead.

### Filed Lawsuits

- ***Mary Maxwell v. U.S. Sec’y of Def. Chris Miller, in his official capacity, et al.*, No. 20-CV-1193-PB, 2021 WL 1396634, at \*2 (D.N.H. Jan. 14, 2021).** Plaintiff sought [injunctive relief](#) to protect herself from mandatory vaccination for COVID-19, but a magistrate judge issued a report, recommending that the district judge dismiss the complaint, because the plaintiff failed to show any actual or imminent direct injuries when “there is at this moment no law directing [her] to be mandatorily injected” with a vaccine for COVID-19. On [February 1](#), a district judge accepted the report and dismissed the complaint in its entirety.
- ***O’Neill et al. v. Person Directed Supports, Inc.*, No. 5:21-CV-00309 (E.D. Pa. Jan. 22, 2021).** Plaintiff employees sued defendant Person Directed Supports, Inc. after the defendant instituted a COVID-19 vaccine mandate for staff. Plaintiffs argued that federal law prohibits mandating vaccines subject to an EUA. Note: this complaint was voluntarily dismissed after defendants rescinded the mandate.
- ***Legarreta v. Macias et al*, No. 2:21-CV-00179 (D.N.M. Feb. 28, 2021).** A New Mexico detention center officer sued a county manager and his supervisors over a workplace requirement for first responders to be inoculated with the COVID-19 vaccine. He sought a court order barring the county from terminating him. The court denied the request for a temporary restraining order without notice. On March 19, 2021, the plaintiff [withdrew](#) his application for a TRO. On June 3, 2021, the defendants filed a motion to dismiss, which plaintiff responded to on June 28, and defendants replied to on July 12.
- ***McClure et al v. Saunders et al*, No. 2:21-CV-00148 (D. Utah Mar. 10, 2021).** Plaintiffs sued on behalf of their minor children, [requesting injunctive relief](#) after the Utah Department of Health issued an order permitting schools to implement mandatory COVID-19 testing as a condition of in-person learning. Plaintiffs allege the mandate is unconstitutional and a violation of their individual rights. The case was dismissed with prejudice on April 22, 2021, after Utah’s Governor signed a bill (SB 107) allowing students refusing COVID-19 testing to participate in in-person learning.
- ***California Educators for Medical Freedom et al v. Los Angeles Unified School District et al.*, No. 21-CV-02388 (C.D. Cal. Mar. 17, 2021).** Plaintiffs [seek injunctive relief](#) after a school district implemented a policy mandating that all employees be vaccinated against COVID-19.


According to the policy, “any refusal to be vaccinated by April 2021 will result in a job detriment, up to and including termination from employment.” On July 27, 2021, [the court dismissed the case without prejudice on ripeness grounds](#), concluding that there has not yet been any injury, as the policy did not require COVID-19 vaccination for employees, but rather required employees to “either receive the vaccine or be tested for COVID-19.”

- ***Neve v. Birkhead et al.*, No. 1:21-CV-00308 (Dist. Ct. M.D.N.C. Apr. 16, 2021).** Plaintiff, a former employee of the Durham County Sheriff’s Office, requested [declaratory and injunctive relief](#) after he was terminated for refusing the COVID-19 vaccine. Defendants had circulated a memo declaring employment was contingent upon vaccination. Plaintiff asserts vaccine mandates are not permissible for vaccines subject to EUA authorization and additionally claims violation of due process. This complaint was voluntarily dismissed by the plaintiff on [June 28](#).
- ***Bridges et al. v. The Methodist Hospital et al.*, No. 4:21-CV-01774, 2021 WL 2221293 (Dist. Ct. S.D. Tex. June 1, 2021).** Plaintiffs, 116 former and current employees of The Methodist Hospital system in Houston, Texas, allege they have been, or are in danger of being, terminated for refusing the COVID-19 vaccine after defendants required it. Plaintiffs seek relief, claiming a mandate cannot be applied to vaccines under EUA. On [June 1, 2021](#), defendants requested federal removal. Non-vaccinated employees subsequently [were suspended](#), and the hospital set a June 21 deadline for either vaccination or termination. On June 12, 2021, the case was [dismissed](#); the court reasoned in part that language in the Food, Drug, and Cosmetic Act did not prevent employer mandates. On [June 14](#), plaintiffs filed a notice of appeal to the Fifth Circuit.
- ***Higley, et al. v. CA State University et al.*, No. 2:21-cv-01126-TLN-JDP (Dist. Ct. E.D. Cal. June 24, 2021).** Plaintiffs, students at the California State University, Chico who recovered from COVID-19, sued the school, arguing that the school’s vaccination mandate could place them “at risk of death or serious illness.” Plaintiffs raise California Constitution and Federal Constitution 14<sup>th</sup> Amendment claims arguing the vaccine violates liberty interests of bodily autonomy, among other arguments. California State University filed a motion to dismiss on August 9, 2021. On August 19, the case was [voluntarily dismissed without prejudice](#).
- ***Wade et al. v. University of Connecticut Board of Trustees*, No. 3:21-cv-00924 (D. Conn. Jul. 6, 2021):** Plaintiffs, students at University of Connecticut, allege that the university’s vaccine mandate violates state and federal laws, as well as the Constitution. Plaintiffs [request](#) the mandate be declared unconstitutional and the university be enjoined from enforcing it. Specific counts include violations of students’ 14<sup>th</sup> Amendment procedural and substantive due process rights and accompanying 42 U.S.C. § 1983 claims as well as violation of informed consent. On August 16, 2021, the court [dismissed the case](#) for lack of jurisdiction on mootness and standing grounds.
- ***McCutcheon v. Enlivant ES, LLC*, No. 5:21-cv-00393 (S.D. W. Va. Jul. 9, 2021).** This docket consists of a removal of a state case to federal court. Plaintiff argues that she faced “retaliatory discharge” from her employment for refusing the COVID-19 vaccine. The court has not yet issued a decision.
- ***Norwegian Cruise Line Holdings Ltd. et al. v. Rivkees, M.D.*, No. 1:21-cv-22492-KMW (S.D. Fla. Jul. 13, 2021):** Plaintiffs, multiple cruise lines, seek [declaratory and injunctive relief](#) against Florida’s Surgeon General, challenging state law *preventing* COVID-19 vaccination requirements, which it seeks to mandate for cruise line passengers. On August 8, 2021, [the federal district court](#)




[issued a preliminary injunction](#) against application of the Florida law to the plaintiffs, concluding that the law violated the Dormant Commerce Clause as well as the First Amendment's protection of free speech. A notice of appeal has been filed in the 11<sup>th</sup> Circuit, and further action stayed in the district court until resolution of the appeal in the 11<sup>th</sup> Circuit.

- ***Klaassen et al. v. The Trustees of Indiana University, No. 1:21-cv-00238-DRL-SLC (Dist. Ct. N.D. Ind. July 18, 2021)***. Plaintiffs, students at Indiana University, argued that the University's vaccine mandate was unconstitutional in violation of the 14<sup>th</sup> Amendment's liberty interest in bodily autonomy. On [July 18, 2021](#), the court denied the students' request for preliminary injunction, concluding that "the Fourteenth Amendment permits Indiana University to pursue a reasonable and due process of vaccination in the legitimate interest of public health for its students, faculty, and staff." On August 2, the 7<sup>th</sup> Circuit Court of Appeals [refused to issue an injunction pending appeal](#). On August 12, 2021, [the U.S. Supreme Court denied](#) a request for immediate injunctive relief.
- ***International Brotherhood of Teamsters, Local 743 v. Central States Southeast and Southwest Areas Health and Welfare and Pension Funds, No. 1:21-cv-03840 (N.D. Ill. Jul. 19, 2021)***: Plaintiff, a workers' union, requests [declaratory and injunctive relief](#) against defendant, a company mandating the COVID-19 vaccine for its employees. Under defendant's policy, employees who refuse the vaccine may be subject to lost paid time off and potential termination. Employees plead for injunctive relief from the policy until an arbitrator has been involved. The court [denied](#) plaintiffs' motion for preliminary injunction on August 3, 2020.
- ***Doe 1 et al. v Incyte Corporation, No. 2:21-CV-05956 (C.D. Cal. July 22, 2021)***: This action, regarding an employer vaccine mandate challenge, has been removed to federal court. Allegations include violation of bodily autonomy interests, privacy interests related to informed consent, and allegations of unfair business practices. The court has not yet issued a decision. On September 6, the case was voluntarily dismissed by plaintiffs.
- ***Khanthathphixay et al. v. Loyola Marymount University et al., No. 2:21-cv-06000 (C.D. Cal. Jul. 24, 2021)***: Plaintiffs, undergraduate students at Loyola Marymount University, [challenge Loyola Marymount's vaccine mandate](#), arguing in part that even though there are exemptions to the policy, those who are unvaccinated must submit to unique university conditions, including living in separate dormitories. Claims include 42 U.S.C. § 1983 claims pursuant to the 14<sup>th</sup> Amendment's equal protection clause, the 1<sup>st</sup> Amendment protection of the right to free exercise, and the 4<sup>th</sup> Amendment's protection of privacy, as well as California Constitutional arguments. Plaintiffs request the university be enjoined from enforcing the mandate and request damages from the university for breach of contract. On August 9, 2021, the court denied plaintiff's ex parte application for TRO.
- ***America's Frontline Doctors et al. v. Wilcox et al., No. 5:21-cv-01243 (C.D. Ca. July 26, 2021)***: Plaintiff students enrolled at the University of California [challenge the university's COVID-19 vaccination mandates](#) generally and across specific campuses, arguing violations of constitutional rights to bodily integrity, freedom from state created danger, and violations of state law. On July 30, 2021, the court denied the ex parte application for TRO. A petition for mandamus has been filed in the 9<sup>th</sup> Circuit. The 9<sup>th</sup> Circuit rejected mandamus relief on August 11, 2021. Plaintiffs have requested mandamus relief from the Supreme Court.

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- ***Harris v. University of Massachusetts Lowell et al.*, No. 1:21-cv-11244 (D. Mass. July 30, 2021)**: Plaintiffs, students at the University of Massachusetts Lowell and University of Massachusetts Boston, [challenge the school's COVID-19 vaccination mandates](#) as violating constitutional due process and religion protections, among other arguments. On August 27, the court denied plaintiffs' requested preliminary injunction and allowed dismissal, rejecting procedural and substantive due process arguments, and explaining there is no constitutional requirement to offer religious exemptions.
  - ***Zywicki v. Washington et al.*, No. 1:21-CV-00894 (E.D. Va. Aug. 3, 2021)**: A teacher employed at George Mason University in Virginia [challenges the university's policy](#) requiring unvaccinated employees to engage in masking, social distancing, and testing, among other requirements. The plaintiff alleges violations of constitutional rights to privacy and due process, as well as a violation of the Supremacy clause, among other arguments. On August 20, the case was voluntarily dismissed.
  - ***Magliulo v. Edward Via College of Osteopathic Medicine*, No. 3:21-cv-02304 (W.D. La. Aug. 17, 2021)**: Plaintiffs, current and entering students at the Edward Via College of Osteopathic Medicine, [challenge the school's COVID-19 vaccination requirement](#), arguing it contravenes state law as well as state and federal constitutional arguments based in the right to bodily integrity and the right to religious freedom. On August 17, 2021, the court [granted the students' requested TRO](#). Louisiana law permits exclusion of unvaccinated students at the recommendation of the Louisiana Department of Public Health, and no such recommendation had been provided. In the absence of this recommendation, and pursuant to another Louisiana provision, a student may not be subjected to a vaccination requirement if a written dissent is presented by the student. Additionally, with respect to Louisiana constitutional protections regarding the freedom of religion, paired with a Louisiana law requiring application of strict scrutiny, the court reasoned the College was unlikely to be able to show that it had used the least restrictive means of forwarding its interest.
  - ***Garfield v. Middle Tennessee State University et al.*, No. 3:21-cv-00613 (M.D. Tenn. Aug. 6, 2021)**: Plaintiffs [challenge the University's COVID-19 vaccine mandate](#) as unlawful under the FDCA and request that the court issue a temporary and permanent injunction enjoining the policy. On September 1, 2021, the court denied the plaintiff's motion for temporary restraining order.
  - ***Pelekai v. State of Hawai'i*, No. 1:21-CV-00343 (D. Haw. Aug. 13, 2021)**: Plaintiff first responders in Hawai'i filed a class action challenging the state's COVID-19 vaccine mandate in Oahu and Maui, arguing the requirement is preempted by and violates federal law, violates substantive and procedural due process, equal protection, the 5<sup>th</sup> Amendment right to bodily integrity, and free exercise protections.
  - ***Hencey, et al. v. United Airlines, et al.*, No. 0:21-CV-61702 (S.D. Fla. Aug. 14, 2021)**: Plaintiff employees of United Airlines challenged the company's COVID-19 vaccine employee mandate. The specific grounds of the challenge are not immediately clear, as the complaint invokes several provisions of the Constitution, including the preamble, and several disparate EEO provisions. On August 17, 2021, the court declined to grant a TRO.
  - ***Children's Health Defense, Inc. et al. v. Rutgers et al.*, No. 3:21-CV-15333-MAS-TJB (U.S. Dist. Ct., D.N.J. Aug. 16, 2021)**: Plaintiffs challenge Rutgers' COVID-19 vaccination mandate as, among other arguments, being preempted by federal law, violating state law, and violating equal





protection, informed consent, and the right to refuse medical treatment under the U.S. Constitution's 14<sup>th</sup> Amendment and the New Jersey Constitution, Article I. The court has not yet issued a decision.

- ***Kheriaty v. The Regents of the University of California et al., No. 8:21-CV-01367 (C.D. Cal. Aug. 18, 2021)***: A physician at the University of California Irvine challenged the University's COVID-19 vaccine mandate, arguing the mandate violates constitutional protections of equal protection and substantive due process. The court has not yet reached a decision.
- ***Jane Does 1-6 et al., v. Mills, No. 1:21-CV-00242-JDL (D. Me. Aug. 25, 2021)***: Plaintiffs, unidentified health care workers in Maine, filed a class action lawsuit challenging the state's vaccine requirement for health care workers. Plaintiffs argue the requirement violates constitutional religious freedom protections, the Constitution's Supremacy Clause, the Equal Protection Clause, and Title VII of the Civil Rights Act. On August 26, 2021, the district court denied plaintiffs' request for a temporary restraining order.
- ***Norris v. Stanley et al., No. 1:21-CV-00756 (W.D. Mich. Aug. 27, 2021)***: Plaintiff, an employee of Michigan State University, challenges the school's vaccination mandate, requesting an exemption for persons with COVID-19 antibodies. On August 31, the district court declined to issue a temporary restraining order.
- ***Dahl et al., v. The Board of Trustees of Western Michigan University et al., No. 1:21-CV-00757-PLM-SJB (W.D. Mich. Aug. 30, 2021)***: Plaintiffs challenge Western Michigan University's requirement that defendants obtain COVID-19 vaccination as a prerequisite to participate on the college soccer team. Plaintiffs argue the requirement violates the free exercise of religion and fourteenth amendment protections of the right to privacy. Plaintiffs also allege the requirement violates the Michigan Constitution and constitutes discrimination in places of public accommodation. On August 31, 2021, the court granted plaintiffs' requested temporary restraining order on religious freedom grounds after requested religious exemptions were rejected.
- ***Beckerich et al., v. Saint Elizabeth Medical Center, No. 1:21-CV-00576 (S.D. Ohio Sept. 3, 2021)***: Plaintiffs challenge Saint Elizabeth Medical Center's employee vaccination mandate, arguing the requirement violates the federal Rehabilitation Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act. Plaintiffs include various other challenges, including anti-trust violations. The court has not yet issued a decision.
- ***Oregon Fraternal Order of Police, et al. v. Brown, No. 21CV35125 (County Court, Oregon, Sept. 3, 2021)***: Oregon state police officers [challenge](#) Governor Kate Brown's [state vaccine mandate](#), which requires vaccination for all state executive branch employees. Among other arguments, plaintiffs argue that the mandate violates constitutional free speech and free expression protections, constitutes wrongful termination, and further violates privileges and immunities, equal protection, due process, and separation of powers principles.

### **Cases to Watch**

In addition to the above initiated litigation, several news articles are summarized below indicating prospective litigation concerning vaccination mandates.



- **Case Watch:** Healthcare workers in a Rock Haven (WI) nursing home were laid off for refusing to receive the COVID-19 vaccine. After sending a letter on [April 1, 2021](#) to county officials requesting modifications to the mandatory COVID-19 vaccine policy, the plaintiffs' attorney stated that he would consider filing a lawsuit if the policy was not modified. By [May 15, 2021](#), the plaintiffs' attorney had filed a notice of claim. On [May 27, 2021](#), the Rock County Board voted to retract the mandate.
- **Case Watch:** Plaintiffs, university students, had their attorney send letters on [April 22, 2021](#), to Rutgers University and [Princeton University](#), threatening legal action if the schools' vaccine mandates are not rescinded. Neither Rutgers nor Princeton University has changed its stance in response to these notices. On [May 3, 2021](#), a similar letter was sent to Cornell University. As of [July 27, 2021](#), Cornell University's website still reflects a mandatory student COVID-19 vaccination policy.
- **Case Watch:** On [July 20, 2021](#), Louisiana Attorney General Jeff Landry sent a letter to Edward Via College of Osteopathic Medicine Louisiana (VCOM), threatening to sue the school for purportedly denying religious exemptions for its COVID-19 vaccine mandate. The letter was sent after three students alleged they had been denied a religious exemption to the vaccine or harassed for choosing not to receive it, which Landry claims violates state law, in part because the vaccines are presently authorized under emergency use authorization only.

**Note** – multiple different media [reports](#) nationally suggest the potential or actual filing of additional cases focused on challenges to vaccine mandates.

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