



## COVID-19 VACCINATION Fact Sheet

# Federal Vaccine Mandates in Response to COVID-19

Following the development, authorization, and initial distribution of safe and [effective](#) COVID-19 vaccines (e.g., Pfizer®, Moderna®, Johnson & Johnson®), the Biden Administration initiated a series of federal vaccine mandates in 2021 affecting tens of millions of Americans.

The legal premise underlying vaccine mandates is simple. Mandates set conditions (e.g., access to services, work status) on an individual's vaccination status or, alternatively, their participation in COVID-19 testing or other preventive measures. Persons who may be medically compromised via vaccination are automatically exempted. Others may claim exemption from vaccination for religious or select, other reasons.

State and local governments have issued multiple types of vaccine mandates during the COVID-19 pandemic. Some of these mandates have been directly challenged, although the majority of these court decisions approve state- or local-based authority. For more information, see the Network's memo, [COVID-19 Vaccination Mandates: Recent Court Cases](#).

Despite misconceptions, no one is physically compelled to be inoculated pursuant to federal or state vaccine mandates. Rather, each person's decision to be vaccinated is tied to their continued participation in specific activities or engagement in particular services.

Federal COVID-19 vaccine mandates have generated significant legal controversies from their inception. Although federal vaccine requirements have been issued prior to the COVID-19 pandemic, the scope of existing COVID-19 mandates has been directly opposed by federal, state, and local officials, as well as private sector entities and individuals. Dozens of cases challenging federal vaccine mandates have been filed in courts nationally. In January 2022, the U.S. Supreme Court is poised to consider legal arguments opposing specific federal vaccine mandates applied to large employers and health care workers in federally-funded facilities.

This fact sheet lists and briefly explains the slate of federal COVID-19 vaccine mandates along with a "snapshot" assessment of their current legal status based on select case outcomes. Ongoing litigation surrounding premier federal vaccine mandates (see Figure 1 below) has been highly dynamic and subject to change, especially following the anticipated issuance of a rapid decision from the U.S. Supreme Court. Additional updates and clarifications to this memo are forthcoming.


**Figure 1. Legal Snapshot of 3 Major Federal Vaccine Mandates**

CATEGORY	CATEGORY	CATEGORY	CATEGORY
OSHA ETS	Employers with 100 or more employees	<a href="#"><i>NFIB v. OSHA &amp; Ohio v. OSHA</i></a> (U.S. S. Ct.) (1/13/22) (halting enforcement)  <a href="#"><i>In re MCP No. 165, OSHA Covid Rule</i></a> (6 <sup>th</sup> Cir.) (12/17/21) (rejecting legal challenges)	Blocked by Supreme Court on January 13, 2021.
CMS Health Care Workers Rule	All workers at CMS-funded facilities	<a href="#"><i>Biden v. Missouri &amp; Becerra v. Louisiana</i></a> (U.S. S. Ct.) (1/13/22) (allowing enforcement)  <a href="#"><i>Missouri v. Biden</i></a> (U.S. Dist. Ct.) (11/29/21) (halting enforcement)  <a href="#"><i>Louisiana v. Becerra</i></a> (U.S. Dist. Ct.) (11/30-21) (halting enforcement)  <a href="#"><i>Florida v. HHS</i></a> (11 <sup>th</sup> Cir.) (12/6/21) (rejecting legal challenges)	Allowed to go into effect by Supreme Court on January 13, 2021.
Federal Contractor Rule	All federal contractors (as defined below)	<a href="#"><i>Missouri v. Biden</i></a> (U.S. Dist. Ct.) (11/29/21) (halting enforcement)  <a href="#"><i>Kentucky v. Biden</i></a> (U.S. Dist. Ct.) (11/30/21) (halting enforcement)  <a href="#"><i>Georgia v. Biden</i></a> (U.S. Dist. Ct.) (12/7/21) (halting enforcement)	Enforcement on hold.

## OSHA Emergency Temporary Standard

The [OSHA Emergency Temporary Standard \(ETS\)](#), issued on November 5, 2021, requires all large employers with 100 or more employees to ensure their employees either are vaccinated against COVID-19 or undergo weekly testing. OSHA’s ETS explicitly allows for medical or religious-based exemptions. Additional specific information on OSHA’s ETS is available in the following Network guidance document: [Guidance: OSHA’s COVID-19 Vaccination Mandate Standard for Large Employers](#).

**Current Legal Status:** OSHA’s ETS was immediately challenged (even prior to its formal introduction) in federal courts. On November 6, 2021, the [Fifth Circuit Court of Appeals](#) blocked the ETS nationwide through a temporary stay. Additional challenges in multiple federal courts were consolidated into one appeal before the Sixth Circuit Court of Appeals. On December 17, the [Sixth Circuit](#), in a 2-1 decision, lifted the Fifth Circuit’s stay and allowed the ETS to go into effect. [OSHA moved forward with the ETS](#) while noting it would not issue citations for (1) noncompliance before January 10, 2022, or (2) testing requirement violations before February 9, 2022, so long as employers made reasonable, good-faith efforts to comply.



Following numerous requests for emergency relief from enforcement of OSHA's ETS, on December 22, the U.S. Supreme Court [agreed to hold a special hearing](#) on January 7, 2022, to assess the legality of the standard, as well as the [Centers for Medicare and Medicaid Services \(CMS\) vaccine mandate](#) for health care workers (discussed below). In the meantime, [OSHA announced](#) that it is "exercising enforcement discretion with respect to the compliance dates of the [mandate]."

A week after its special hearing, on January 13, 2022, the [Supreme Court](#) blocked the ETS from going into effect. In a 6-3 decision, the Court stayed the OSHA ETS, holding that opponents of the ETS were likely to succeed on their claims that the agency exceeded its authority.

## **CMS Vaccine Mandate**

The Centers for Medicare & Medicaid Services (CMS) [Interim Final Rule](#) (the CMS Rule), issued on November 5, 2021, requires workers (including students, people in training, volunteers, and others) at Medicare- and Medicaid-certified facilities to be vaccinated against COVID-19 within 60 days of the rule's issuance. Unlike with OSHA's ETS (noted above) there is no testing alternative. However, CMS's Rule expressly allows for medical or religious exemptions.

**Current Legal Status:** Following a [Missouri district court's](#) prohibition on enforcement of CMS's rule in 10 states on November 29, 2021, and a [federal district court in Louisiana's](#) similar prohibition a day later on November 30, [CMS suspended](#) "activities related to the implementation and enforcement of [the mandate] pending future developments in the litigation." Shortly thereafter on December 6, the [Eleventh Circuit Court of Appeals](#) rejected Florida's request to block the mandate. As discussed above, on December 22, the Supreme Court [agreed to hold a special hearing](#) on January 7, 2022 to assess the legality of the OSHA ETS and CMS Rule.

On January 13, the [Supreme Court](#) upheld the CMS Mandate. In a 5-4 decision, the Court held that the Mandate fell within HHS' conditional spending authority, allowing it to go into effect nationwide.

## **Federal Contractor Rule**

On September 9, 2021, President Biden issued [Executive Order 14042](#), mandating COVID-19 vaccination for federal contractors by January 18, 2022. The mandate applies to contractors (and their workers) for all "new contract[s], contract-like instrument[s]," and "extension or renewal[s] of an existing contract or contract-like instrument" for services, construction, or a lease. There is no alternate testing option, but medical and religious exemptions are permitted.

**Current Legal Status:** On November 29, a [federal district Court in Missouri](#) blocked enforcement of the rule for employees of federal contractors in Alaska, Arkansas, Iowa, Missouri, Montana, Nebraska, New Hampshire, North Dakota, South Dakota and Wyoming. Next, on November 30, a [federal district court in Kentucky](#) blocked enforcement of the rule in Kentucky, Ohio, and Tennessee. The ruling was appealed, and on January 6, 2022, the [Sixth Circuit Court of Appeals](#) refused to block the district court ruling. On December 7, a [federal judge in Georgia](#) granted a preliminary injunction, blocking enforcement nationwide. Two days later on December 9, the U.S. Department of Justice filed a notice of appeal to the [Eleventh Circuit](#), as well as an emergency motion to stay the injunction, which the court subsequently rejected on December 17. On December 15, [a judge in Louisiana](#) blocked the mandate in Louisiana, Mississippi, and Indiana. The Justice Department appealed that ruling to the [Fifth Circuit](#) on January 11. Until the Eleventh and Fifth Circuits rule on the appeals, enforcement of the mandate remains on hold.



## Federal Employees

On September 9, 2021, President Biden issued [Executive Order 14043](#), requiring all federal employees to be fully vaccinated by November 22, 2021. There is no testing alternative, but medical and religious exemptions are permissible.

**Current Legal Status:** The Biden administration announced on November 29 that it would [delay enforcement](#) of the order, including suspensions and penalties, until 2022.

On January 21, 2022, [a federal judge in Texas](#) issued a nationwide injunction, blocking the federal employee mandate from going into effect. The court, relying on the Supreme Court's reasoning in the OSHA ETS case (see above), found that the challengers were likely to succeed on their arguments against the mandate. Primary among the arguments suggested by the plaintiffs was that President Biden lacked constitutional or statutory authority to directly mandate employees be vaccinated as part of his Executive branch authority to regulate workplace conduct. The Department of Justice indicated that they would appeal the ruling.

## Federal Military Mandate

With support from President Biden as Commander in Chief, U.S. Secretary of Defense Lloyd Austin [issued a memo](#) on August 24, 2021 directing secretaries of military departments to implement plans to begin full vaccination of all members of the armed forces. Those who refuse the vaccine or are not otherwise entitled to an exception must be discharged from military service. On September 14, the secretary of the Army [issued a policy memorandum](#) requiring active duty units to be fully vaccinated by December 15, and reserve and National Guard units to be fully vaccinated by June 30, 2022.

**Current Legal Status:** On December 27, President Biden signed a [defense budget bill](#) that included a provision prohibiting military branches from dishonorably discharging any member who refused vaccination on religious or other grounds, requiring honorable discharge instead. While the vast majority of the active federal military is now vaccinated, National Guard units have not all followed suit. Several governors have refused to order vaccination for their states' National Guard, including [Texas Governor Greg Abbott](#), who [filed a lawsuit](#) against the Biden administration on January 4, 2022. A legal challenge by Oklahoma Governor Kevin Stitt to enjoin enforcement of the vaccination mandate for the state National Guard was rejected on December 28 by a [federal court in Oklahoma](#). On January 3, a federal judge in Texas [forbade the Navy](#) from taking "any adverse action" against Navy service members who have declined the vaccine and are requesting an exemption.

## Head Start Mandate

The federal [Head Start Program Performance Standards](#) requires all teachers, volunteers, and contractors working with Head Start, a federally-funded program promoting education for children from low-income families under age 6, to be fully vaccinated for COVID-19 by January 31, 2022. Medical and religious exemptions are permitted, but there is no alternative testing requirement as per OSHA's ETS (discussed above).

**Current Legal Status:** On December 31, 2021, a [federal judge in Texas](#) suspended the vaccine mandate for Head Start program participants in the state. On January 1, 2022, a [federal judge in Louisiana](#) held that the Biden administration cannot require Head Start teachers in 24 states to be vaccinated.



## **SUPPORTERS**

**Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.**

**This document was developed, drafted, and updated by Erica N. White, J.D., Staff Attorney, James G. Hodge, Jr., J.D., L.L.M., Director, and Jennifer L. Piatt, J.D., Deputy Director, with the Network for Public Health Law – Western Region Office, Sandra Day O’Connor College of Law, Arizona State University (ASU). The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

**January 14, 2022**



Robert Wood Johnson Foundation