



**COVID-19 VACCINATION**  
**Fact Sheet**  
(last updated May 12, 2022)

## 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.

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. Additional updates and clarifications to this memo are forthcoming.


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

CATEGORY	DESCRIPTION	CASES	RESULTS
OSHA Emergency Temporary Standard	Employers with 100 or more employees	<p><a href="#"><i>NFIB v. OSHA &amp; Ohio v. OSHA</i></a> (U.S. S. Ct.) (1/13/22) (halting enforcement)</p> <p><a href="#"><i>In re MCP No. 165, OSHA Covid Rule</i></a> (6<sup>th</sup> Cir.) (12/17/21) (rejecting legal challenges)</p>	Blocked by Supreme Court on January 13, 2022; later withdrawn by OSHA.
CMS Health Care Workers Rule	All workers at CMS-funded facilities	<p><a href="#"><i>Biden v. Missouri &amp; Becerra v. Louisiana</i></a> (U.S. S. Ct.) (1/13/22) (allowing enforcement)</p> <p><a href="#"><i>Missouri v. Biden</i></a> (U.S. Dist. Ct.) (11/29/21) (halting enforcement)</p> <p><a href="#"><i>Louisiana v. Becerra</i></a> (U.S. Dist. Ct.) (11/30-21) (halting enforcement)</p> <p><a href="#"><i>Florida v. HHS</i></a> (11<sup>th</sup> Cir.) (12/6/21) (rejecting legal challenges)</p>	Allowed to go into effect by Supreme Court on January 13, 2022.
Federal Contractor Rule	All federal contractors (as defined below)	<p><a href="#"><i>Missouri v. Biden</i></a> (U.S. Dist. Ct.) (11/29/21) (halting enforcement)</p> <p><a href="#"><i>Kentucky v. Biden</i></a> (U.S. Dist. Ct.) (11/30/21) (halting enforcement)</p> <p><a href="#"><i>Georgia v. Biden</i></a> (U.S. Dist. Ct.) (12/7/21) (halting enforcement)</p>	Enforcement on hold.

## OSHA Emergency Temporary Standard

The [OSHA Emergency Temporary Standard \(ETS\)](#), issued on November 5, 2021, required 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 the time.



Following numerous requests for emergency relief from enforcement of OSHA's ETS, on December 22, the U.S. Supreme Court [held 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). On January 13, 2022, the [Supreme Court](#) blocked the ETS from going into effect. In a 6-3 decision, the Court held that opponents of the ETS were likely to succeed on their claims that the agency exceeded its authority. OSHA withdrew the ETS formally on January 26, 2022. On February 18, the [Sixth Circuit Court of Appeals](#) dismissed the suit as moot.

## **CMS Vaccine Mandate**

CMS [Interim Final Rule](#) (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. Unlike with OSHA's ETS (noted above) there is no testing alternative. CMS' 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." On December 6, the [Eleventh Circuit Court of Appeals](#) rejected Florida's request to block the mandate. As discussed above, the Supreme Court [held 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, it determined that the mandate fell within HHS' conditional spending authority, allowing it to take effect nationwide.


Despite the Supreme Court's ruling, on February 8, 16 states, led by Louisiana, filed an [amended complaint](#), again challenging the CMS Rule. The amended complaint argues that evolving circumstances warrant a new review of the basis on which CMS framed its mandate. Among the changing circumstances is how the mandate does not effectively combat the Omicron variant. Most states have already passed their vaccination deadline date, and others are set to surpass them later in February. On March 4, the full [5th Circuit Court of Appeals](#) denied the request to amend the lawsuit, holding that doing so would alter the status of the appeal, with 10 of the 17 judges voting against rehearing the case.

However, despite the wide adoption of the CMS mandate and consensus of its constitutionality, dissidents remain. In a symbolic vote on March 2, the [U.S. Senate](#) voted to roll back the CMS mandate, but the measure is likely to die on the House floor. Later than month, [Kansas Governor Laura Kelly announced](#) that state regulators would not enforce the mandate at hospitals and other health care facilities. [CMS subsequently sent a letter](#) to the governor's office threatening to cut funding as to increase federal regulatory presence in the state.

## **Federal Contractor Rule**

On September 9, 2021, President Biden issued [Executive Order 14042](#), mandating COVID-19 vaccination for federal contractors and subcontractors 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. On November 30, a [federal district court in Kentucky](#) blocked enforcement of the rule in Kentucky, Ohio, and Tennessee. The ruling was appealed. 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. Oral arguments took place on April 4, 2022, during which a three-judge Eleventh Circuit panel [indicated that the federal government had a “high bar”](#) to clear to overturn the lower court’s injunction. 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. Another [federal district court in Arizona](#) enjoined enforcement of the mandate on January 27, 2022. Until the Circuit Courts rule on the appeals, enforcement of the mandate remains on hold nationwide.

With the legal status of the vaccine mandate for federal contractors unclear, the [Office of Management and Budget issued guidance](#) stating the federal government would not take action to enforce any portion of Executive Order 14042. Additionally, the Department of Defense instructed all contracting officers not to include vaccination clauses in existing contracts and orders.

## 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 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. On February 9, the [5th Circuit Court of Appeals](#), in a 2-1 panel decision, declined to block the lower court’s order barring the mandate, allowing the ban to continue during the appeals process.

A [different three-judge panel](#) of the 5th Circuit Court considered the case on March 8, assessing again whether to put aside the district judge’s nationwide injunction, or reinstate the mandate. Judges considered the impacts of outside factors including falling COVID-19 rates, mask mandate repeals, extremely high percentages of vaccinated federal employees, and other 5th Circuit decisions concerning vaccine mandates. On [April 7, 2022](#), the panel ordered the district judge to throw out the challenge. On April 11, the [Department of Justice](#) asked the court to take “appropriate steps so that the government may resume implementation and enforcement” of the executive order, arguing it is “justified by the serious ongoing harm to the public interest and to the government.” Shortly thereafter, on April 19, the [4th Circuit](#) held that the mandate could not be challenged in court because the Civil Service Reform Act removed courts’ ability to hear suits involving federal employment. Challenges would instead need to be resolved via an administrative scheme.

The Safer Federal Workforce Task Force published [guidance](#) on how agencies should navigate the order during the injunction. Some federal agencies established their own policies. For example, the Department of [Health and Human Services \(HHS\)](#) and the Indian Health Service (IHS) issued their own mandates in August



2021, one month before Biden's E.O. All employees of the [Veterans Health Administration](#), administered by the Veterans Affairs (VA), are also subject to a vaccine mandate.

## 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. [Texas Governor Greg Abbott 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.

On February 28, the [5th Circuit Court of Appeals](#) upheld the injunction as applied to the Navy members. On March 7, the Biden administration enforcement of the mandate against Navy service members alleging religious beliefs violations. The federal government argues that the inability to enforce the mandate infringes on military decision-making in deployment decisions. On [March 25, the Supreme Court](#) stayed the Texas federal district court's order, allowing the Navy to limit deployment, training, and other activities for servicemembers declining vaccines on religious grounds while the lawsuit plays out in the 5<sup>th</sup> Circuit. Similarly, [on April 19, the Supreme Court](#) declined to halt the Air Force from disciplining unvaccinated reservists, keeping the mandate in place. On April 28, a [Georgia federal judge](#) allowed a U.S. Air Force officer to transform her individual claim against the mandate into a proposed class action. Following the nationwide injunction of the federal employee mandate (discussed above), the [Department of Defense](#) announced that it would not be enforcing the mandate for civilian military employees while the challenge remains in court.

On February 1, Defense Secretary Austin rejected in writing a request among 7 Republican governors (Alaska, Oklahoma, Texas, Idaho, Mississippi, Nebraska, and Wyoming) for exemptions from vaccination mandates for their states' National Guard troops. He repeated how failure to vaccinate will result in prohibition on participating in drills, training, and other military duties, and will "jeopardize the member's status in the National Guard." In March, the [Biden administration](#) asked a federal court in Oklahoma to dismiss the state's lawsuit over the National Guard mandate. The [Army](#) and [Marines](#) have begun dismissing service members who refused vaccination. Responding to forcible discharges of unvaccinated service members, [one U.S. Representative](#) introduced a bill in May 2022 to reinstate military personnel who had refused the vaccine. Multiple lawsuits have been filed in federal courts challenging denied religious exemptions.



## 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 former 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. The rule was preliminarily enjoined in 25 states pending resolution in court. On March 4, a [federal judge in Michigan](#) upheld the Head Start mandate as applied to 3 Michigan school districts, It refused to block the rule from taking effect later that month and upheld the Biden administration's authority via HHS to implement a vaccine mandate for the program.

---

### 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 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



Robert Wood Johnson Foundation

representation. For legal advice, please consult specific legal counsel.