

Another Appellate Court Rejects Challenge to Vaccine Requirement for Federal Workers

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On April 19, a panel of the 4th U.S. Circuit Court of Appeals dismissed a case against the U.S. Department of Defense that had claimed the COVID-19 vaccine requirement for federal workers is unconstitutional. We've gathered articles on the news from *SHRM Online* and other media outlets.

Similar Ruling to 5th Circuit Decision

The court's decision echoed an April 7 judgment by the 5th Circuit that overturned a previous injunction against the directive, finding that federal employees who sought to challenge the requirement should have gone to the Merit Systems Protection Board (MSPB) instead of to the courts. Nonetheless, federal employees can request a review of the MSPB's decisions by a federal appeals court.

(*Forbes* (<https://www.forbes.com/sites/zacharysmith/2022/04/19/federal-workers-cant-sue-over-bidens-vaccine-mandate-appeals-court-says/?sh=39ec89e4150e>))

Will Decisions Be Appealed?

The groups that challenged the vaccination directive and lost before the 5th Circuit could ask the full appeals court or the U.S. Supreme Court to review the matter. The 4th Circuit ruling similarly might be appealed.

(*SHRM Online* (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/federal-covid-19-vaccination-mandate-reinstated-by-appeals-court.aspx))

2-1 Vote Before the 5th Circuit

In the 2-1 vote before the 5th Circuit, Judges Carl Stewart and James Dennis, both nominated to the court by President Bill Clinton, were in the majority. Judge Rhesa Barksdale, nominated by President George H.W. Bush, dissented, saying the relief the challengers sought does not fall under the Civil Service Reform Act cited by the administration.

(*Fox10 Phoenix* (<https://www.fox10phoenix.com/news/appeals-court-oks-bidens-federal-employee-covid-19-vaccine-mandate>))

Requirement Applied to Millions

President Joe Biden in September 2021 said he would require about 3.5 million federal government workers to get vaccinated by Nov. 22, barring a religious or medical accommodation, or face discipline or firing. The White House in January said 98 percent of federal employees had been vaccinated or were seeking an exemption.

(Reuters (<https://www.reuters.com/legal/government/covid-vaccine-mandate-federal-workers-cant-be-challenged-court-4th-circ-2022-04-19/>))

Directive Applies to Executive Branch Workers

Biden issued the executive order in September 2021 requiring vaccinations for all executive branch agency employees, unless they qualified for an exemption based on a medical or religious objection.

The Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>) applies to employees of the executive branch of the federal government. Employees in the judicial and legislative branches are not covered by the order. The Safer Federal Workforce Taskforce has issued guidance on the vaccination requirement for federal agencies.

(Safer Federal Workforce Taskforce (<https://www.saferfederalworkforce.gov/faq/vaccinations/>))

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