

COURT UPHOLDS EMPLOYER'S MANDATORY COVID-19 VACCINATION POLICY

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In what is believed to be the first court decision on the issue of mandatory COVID-19 vaccinations, the U.S. District Court for Southern Texas upheld a hospital's policy requiring that all of its employees must be vaccinated in order to remain employed. The hospital suspended almost 200 employees after they failed to get vaccinated by the hospital's deadline, and announced that it would terminate their employment if they continued to refuse the vaccine. Approximately 117 employees filed a lawsuit challenging the policy. The court, in *Jennifer Bridges et al v. Houston Methodist Hospital*, easily dismissed the lawsuit, finding that the hospital had the right

to require all of its employees to be vaccinated in order to continue working there.

In her complaint, the lead plaintiff posited the oft-cited argument that individuals cannot be forced to be vaccinated against COVID-19 because, at present, the vaccines have only received emergency approval from the FDA. Thus, she claimed that her employer's vaccine mandate violated federal law regarding emergency vaccines because federal law requires the Department of Health and Human Services to warn consumers of the "potential benefits and risks of use" of such a vaccine and give them "the option to refuse administration of the product." The court made short shrift of this argument, explaining that this provision is aimed at the Department of Health and Human Services, not employers, and that it neither expands nor restricts the responsibilities of private employers. In fact, the court stated that it "does not apply at all to private employers like the hospital in this case."

The court similarly dispatched the plaintiff's argument that the hospital was coercing its employees to act as "human guinea pigs" in human research trials on pain of termination of employment, noting that the hospital was neither approved for nor engaging in human trials so the rules regarding coercion during such studies did not apply. As to the plaintiff's argument that the mandatory vaccination requirement was akin to "forced medical experimentation during the Holocaust," the court deemed the argument "reprehensible" and dismissed it out of hand.

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Finally, the court held that the plaintiff was not being coerced to be vaccinated against COVID-19. Offering a choice between vaccination and termination of employment does not amount to coercion. The hospital's decision to require its employees to be vaccinated was made to keep staff, patients and their families safe. The court aptly noted that the plaintiff is free to be vaccinated or not, as she chooses. If she chooses not to be vaccinated, she "will simply need to work somewhere else."

While this case was decided in Texas, it may have persuasive value for similar cases in Connecticut and surrounding states. As we have discussed previously, the Equal Employment Opportunity Commission's most recent guidance makes clear that employers can require employees to be vaccinated so long as they make reasonable accommodations for disabilities and sincerely-held religious objections to vaccination. While mandatory vaccination policies are most likely to be upheld in situations where employees are working with vulnerable populations such as hospitals and nursing homes, if crafted properly they are likely to enjoy broader application as well.

Employers, however, must be careful not to implement the policy in a way that would discriminate against any protected class of individuals, and may want to ensure that all employees have a way to easily access the vaccine. Employers should also have a procedure in place to assess requests for reasonable accommodations due to disabilities and/or sincerely-held religious beliefs. Pullman & Comley's employment lawyers are available to help you craft a mandatory vaccine policy for your workplace.

Posted in COVID-19, Vaccine

Tags: U.S. Department of Health and Human Services (HHS), U.S. Food and Drug Administration (FDA)