

A Federal District Court Calls Timeout — CMS’s Interim Final Rule Subject to a Nationwide Injunction

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Less than a month ago, the Centers for Medicare & Medicaid Services (“CMS”) issued its Interim Final Rule, which requires all staff to be vaccinated against COVID-19. A [previous GableGotwals Alert](#) outlines the Rule’s requirements. But, as with the Occupational Safety and Health Administration’s (“OSHA”) Emergency Temporary Standard, litigation challenging the CMS Rule ramped up over the last month. That litigation came to a head this week with two federal district court rulings.

On November 29, 2021, the Eastern District of Missouri [issued an order](#) enjoining the implementation and enforcement of the CMS Rule against the ten states named in that case. Those states included Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming.

Just one day later, the Western District of Louisiana issued a nationwide injunction, calling a nationwide timeout on the CMS Rule’s implementation and enforcement. That [order](#) stated that a nationwide injunction was “necessary due to the need for uniformity” and because “there are unvaccinated healthcare workers in other states [besides those that are parties to this litigation] who also need protection.” Accordingly, the court enjoined and restrained CMS and its directors, employees, administrators, and secretaries from implementing the CMS Rule until the resolution of the case or until further order from the Western District of Louisiana, the Fifth Circuit Court of Appeals, or the United States Supreme Court. The order, though, explicitly exempted the 10 states included in the Eastern District of Missouri’s order from its control.

Effectively, CMS is now in the same holding pattern as OSHA. Even though the preliminary injunction is immediately appealable, such a challenge would come before the same court that previously stayed the OSHA vaccine mandate — the Fifth Circuit Court of Appeals.

The other vaccine-related piece of litigation — President Biden’s executive order that addresses federal contractors and subcontractors — was also subject to an injunction this week. On November 30, the Eastern District of Kentucky [enjoined](#) the United States Government from enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in three states: Kentucky, Ohio, and Tennessee.

With two nationwide pauses on vaccine-mandate rules now in place, only the federal-contractor mandate remains active on a national level, except in the three states already mentioned. Employers should monitor the litigation closely and ensure that they are able to comply with any applicable rules if the courts start the clock again. GableGotwals has created an [OSHA compliance package](#) to allow swift compliance with the Emergency Temporary Standard, if necessary.

GableGotwals’ [Employment & Labor team](#) remains on the cutting edge of employment-related legal developments and are committed to helping employers navigate the nuances of emerging issues they face. Please contact any member of the team for further assistance.