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What Can We Do Now?

**COVID-19 Vaccine Mandates after
SCOTUS Strikes Down the OSHA ETS but
Upholds the CMS Mandate**

February 10, 2022

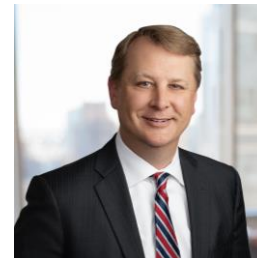


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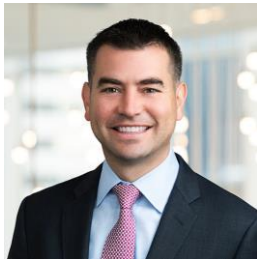
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Agenda



1. Vaccine mandates under federal law
2. Vaccine mandates under state law
3. City or local mandates
4. International travel issues
5. Vaccine mandate litigation
6. Benchmarking survey
7. A little bit of science
8. What can you do now and what are the risks

Vaccine Mandates Under Federal Law

OSHA ETS Struck Down



OSHA Emergency Temporary Standard issued November 5, 2021, covered employers with 100 or more employees, required them to “develop, implement, and enforce a mandatory COVID–19 vaccination policy,” and required verification of the vaccination status of each employee. Only exceptions were testing each week and wearing a mask at work.

On January 13, 2022, in *National Federation of Independent Business, et al., v. Department Of Labor, Occupational Safety and Health Administration, et al.*, SCOTUS (6-3) struck down the ETS.

- The Occupational Safety and Health Act of 1970 empowers the Secretary to set workplace safety standards, not broad public health measures.
- “Although COVID– 19 is a risk that occurs in many workplaces, it is not an *occupational* hazard in most. COVID–19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases. Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without clear congressional authorization.”

What the Supreme Court's ETS Decision Does Not Do




Does not prohibit vaccine mandates by private employers.

CMS Mandate Upheld

- On November 5, 2021, the Secretary of Health and Human Services issued an interim final rule (the “CMS Rule”) amending the existing conditions of participation in Medicare and Medicaid to add a new requirement—that facilities ensure that their covered staff are vaccinated against COVID–19. The CMS Rule requires providers to offer medical and religious exemptions, and does not cover staff who telework full-time.
- SCOTUS (5-4) upheld the CMS Rule as a proper exercise of the Secretary of Health and Human Services’ delegated authority.
- The CMS Rule applies to nearly all Medicare and Medicaid-certified providers and suppliers.



Nationwide Injunctions Against Federal Contractor and Federal Employee Vaccine Mandates



Nationwide injunction issued against E.O. 14042 that compelled each business contracting with the federal government to require its employees to be vaccinated or lose its contract. *Georgia v. Biden*, No. 1:21-CV-163 (S.D. Ga. Dec. 7, 2021).

Nationwide injunction issued against E.O. 14043 that mandated that all federal employees consent to vaccination or lose their jobs. *Feds for Medical Freedom, et al., v. Biden, et al.*, No. 3:21-cv-356 (S.D. Tx. Jan. 21, 2022).

Net/Net Under Federal Law:

- Unless you receive Medicare or Medicaid funding, your company is not required to impose a vaccine mandate under federal law.
- Nothing under federal law prohibits a company from imposing a vaccine mandate.



Vaccine Mandates Under State Law

Strongest State Prohibitions Against Vaccine Mandates

Tennessee – Discrimination

- “A private business, governmental entity, school, or local education agency shall not compel or otherwise take an adverse action against a person to compel the person to provide proof of vaccination if the person objects to receiving a COVID-19 vaccine for any reason.” Applies to all employees and applicants.
"Adverse action" means to:
 - A. Discriminate against a person by denying the person employment, privileges, credit, insurance, access, products, services, or other benefits; or
 - B. Discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, locations, rights, immunities, promotions, or privileges;
- Provides for a private right of action for injunctive relief to recover compensatory damages and attorneys' fees.
- [Tenn. Code § 14-1-101](#) *et seq.*

Strongest State Prohibitions Against Vaccine Mandates

Montana – Discrimination

Montana

- Employers may not refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport. An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trial.
- Exceptions for health care providers and for licensed nursing homes, long-term care facilities, and assisted living facilities under certain circumstances.
- Remedies available are those under the Montana Human Rights Act, including a complaint to the Department of Labor and Industry and potential court action.
- [HB 702](#)

States With Broadest Exemptions*

Texas – Personal Conscience

- Employers may not compel receipt of a COVID-19 vaccine by any individual who claims one of the following exemptions:
 - Any reason of personal conscience
 - A religious belief
 - Medical reasons, including prior recovery from COVID-19.
- Any employee subjected to a vaccine mandate in violation of Executive Order GA-40 is invited to notify the Texas Workforce Commission at (800) 939-6631 or at vaccine_job_loss@twc.texas.gov. Verified tips from employees who have been impacted by employer mandates will be referred to the appropriate authorities for prosecution. (Texas Workforce Commission Letter December 8, 2021)
 - <https://www.twc.texas.gov/files/businesses/commissioner-letter-covid19-vac-mandate-120821-twc.pdf>
- [Executive Order GA-40](#)

States With Broadest Exemptions

Utah – Personal Belief

- Exempts from vaccine mandate where:
 1. Receiving a vaccination would be injurious to the health and well-being of the individual.
 2. Receiving a vaccination conflict with a sincerely held religious belief, practice, or observance of the individual.
 3. Receiving a vaccination would conflict with a sincerely held **personal belief** of the individual.
- Applies only to employers with 15 or more employees. If fewer than 15 employees, employers can require vaccination without exemptions, if the employer can establish a nexus between the vaccine requirement and the employee's assigned duties and responsibilities.
- Employers may not refuse to hire a potential employee or terminate, demote, or reduce the wages of an employee. Nothing prohibits reassignment or an employee or termination if reassignment is not practical.
- <https://le.utah.gov/~2021S2/bills/sbillenr/SB2004.pdf>

States With Broadest Exemptions

North Dakota – Philosophical or Moral Beliefs

- Does not prohibit vaccine mandate but provides the following exemptions to employees, applicants, and independent contractors:
 - Can submit proof of COVID-19 antibodies as an exemption to the vaccination requirement. Such proof is valid for six months from the date of the antibody test.
 - Can submit to periodic COVID-19 tests as an exemption to the vaccination requirement.
 - Can submit one of the following certificates as an exemption to the vaccination requirement:
 - A certificate from a North Dakota licensed physician, physician assistant, or advanced practice registered nurse stating the physical condition of the employee, prospective employee, or independent contractor is such that immunization would endanger the life or health of the employee, prospective employee, or independent contractor; or
 - A certificate signed by the employee, prospective employee, or independent contractor stating the employee's, prospective employee's, or independent contractor's religious, **philosophical, or moral beliefs** are opposed to such immunization.
 - This section does not apply to the extent an employer or an independent contractor is required to comply with federal law, rules, or guidance relating to requirements for vaccinations for COVID-19.
 - <https://www.legis.nd.gov/assembly/67-2021/special-session/documents/21-1105-04000.pdf>

States With Narrower Exemptions

Florida

- A private employer may not impose a COVID-19 vaccination mandate for any full-time, part-time, or contract employee without providing individual exemptions that allow an employee to opt out of such requirement on the basis of medical reasons, including, but not limited to, pregnancy or anticipated pregnancy; religious reasons; COVID-19 immunity; periodic testing; and the use of employer-provided personal protective equipment.
- If an employer receives a completed exemption statement authorized, the employer **must** allow the employee to opt out of the employer's COVID-19 vaccination mandate.
- Employees must use Florida-provided exemption forms.
- Statute does not provide for a private right of action; instead, State Attorney General to investigate complaints and empowered to issue fines: (1) For an employer with fewer than 100 employees, \$10,000 per violation; (2) For an employer with 100 or more employees, \$50,000 per violation.
- [HB 1B](#)

States With Narrower Exemptions

Arizona

- Employers must provide reasonable accommodations for sincerely held religious beliefs, practices, or observances unless the accommodation would pose an undue hardship and more than a de minimis cost to the operation of the employer's business. Licensed health care institutions may require their employees to be vaccinated.
- [SB 1824](#) / [ARS § 23-206](#)

States With Narrower Exemptions

Alabama

- “An employer may not require any employee to receive a vaccination as a condition of employment without providing the employee the opportunity to be exempted from the vaccination mandate for religious or medical reasons in accordance with applicable law... and this section.”
- Exemptions: (1) Health care provider has recommended that they refuse the COVID-19 vaccination based on their current health conditions and medications (must include a licensed health care provider’s signature on the form to claim this exemption); (2) Previously suffered a severe allergic reaction (e.g., anaphylaxis) related to vaccinations in the past; (3) Previously suffered a severe allergic reaction related to receiving polyethylene glycol or products containing polyethylene glycol; (4) Previously suffered a severe allergic reaction related to receiving polysorbate or products containing polysorbate; (5) Received monoclonal antibodies or convalescent plasma as part of a COVID-19 treatment in the past 90 days; (6) Bleeding disorder or taking a blood thinner; (7) Severely immunocompromised such that receiving the COVID-19 vaccination creates a risk to their health; (8) Diagnosed with COVID-19 in the past 12 months; (9) Receiving the COVID-19 vaccination conflicts with my sincerely held religious beliefs, practices, or observances.
- <https://legiscan.com/AL/text/SB9/id/2448169>

States With Narrower Exemptions

Arkansas

- If an employee complies with the requirements of the law's specific exemption process related to COVID-19, the employee may not be terminated due to a COVID-19 mandate. Exemptions: (1) A negative antigen detection test result or molecular diagnostic test result no more than one (1) time per week showing that the employee is not positive for coronavirus 2019 (COVID-19); (2) Proof of immunity from the virus that causes COVID-19 or its variants, including without limitation the presence of antibodies, T cell response, or proof of a positive COVID-19 or its variants test (limited to two times per year, not to exceed one time every six months from a licensed healthcare provider).
 - <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB739.pdf>

States With Narrower Exemptions

Iowa

- An employer that requires an employee to receive a COVID-19 vaccine shall waive the requirement if the employee, or, if the employee is a minor, the employee's parent or legal guardian, requests a waiver and submits either of the following to the employer:
 - A statement that receiving the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee.
 - A statement that receiving the vaccine would conflict with the tenets and practices of a religion of which the employee is an adherent or member.
 - Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.
 - <https://www.legis.iowa.gov/docs/publications/LGE/89/HF902.pdf>

States With Narrower Exemptions

Kansas

- If an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with such requirement would:
 - (1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements, protocols or at the order, direction or delegation of a physician; or
 - (2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.
- http://www.kslegislature.org/li_2021s/b2021s/measures/documents/hb2001_enrolled.pdf

States With Narrower Exemptions

West Virginia

- Permits an eligible employee or prospective employee to be exempted from having to comply with a COVID-19 vaccination mandate of a covered employer as a condition of continued employment or hire by presenting:
 - a notarized certification executed by a licensed physician or advanced practice registered nurse stating that a medical exemption is required due to the individual's physical condition or a specific precaution or because the individual has COVID-19 antibodies from a previous infection or has recovered from COVID-19; or
 - a notarized certification executed by the individual stating that he or she holds religious beliefs that prevent him or her from taking the COVID-19 vaccination.
 - Once provided with such a certification, a covered employer "shall not be permitted to penalize or discriminate against [the] current or prospective employee[] ... by practices including, but not limited to, benefits decisions, hiring, firing, or withholding bonuses, pay raises, or promotions."
 - https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB335%20ENR.htm&yr=2021&sesstype=3X&i=335

States Requiring Vaccination (or Testing) of Healthcare Workers

- [California](#) – Health care workers must be fully vaccinated and boosted.
- [Colorado](#) – Employees, direct contractors, and support staff of licensed health care setting must be fully vaccinated.
- [Connecticut](#) – Employees of [long-term care facilities](#) and [state hospitals](#) must be vaccinated and boosted (or exempted from same).
- [Delaware](#) – Staff in long-term care facilities and other health care facilities (including hospitals) must be vaccinated or undergo regular testing.
- [District of Columbia](#) – All licensed, certified, and registered health professionals, as well as all unlicensed health care workers, must be vaccinated.
- [Illinois](#) – Health care workers must be vaccinated or tested weekly.

States Requiring Vaccination (or Testing) of Healthcare Workers

- [Maine](#) – Health care workers must be fully vaccinated.
- [Maryland](#) – Staff (including employees, contractual staff, and other employees performing duties at the facility) of nursing homes and hospitals must be vaccinated.
- [Massachusetts](#) – Staff of hospice programs, long-term care facilities, certain home care service providers, and assisted living residences must be vaccinated and boosted.
- [Mississippi](#) – All nursing home staff must be fully vaccinated or receive COVID-19 testing two times weekly.
- [New Jersey](#) – All workers in certain state and private health care facilities must be fully vaccinated and boosted.
- [New Mexico](#) – All workers in certain health care settings (including hospitals) must be vaccinated and boosted.

States Requiring Vaccination (or Testing) of Healthcare Workers

- [New York](#) – Health care workers must be fully vaccinated (and no religious exemptions).
- [Oregon](#) – Personnel in health care settings must be fully vaccinated.
- [Pennsylvania](#) – Employees in state health care facilities and high-risk congregate care facilities must be fully vaccinated or tested weekly.
- [Rhode Island](#) – All health care workers and providers must be fully vaccinated.
- [Washington](#) – Staff in health care and long-term care settings must be fully vaccinated.

Illinois

- **No general rule requiring or prohibiting private employers from implementing vaccine mandates.**
- Mandates vaccination for all “Health Care Workers,” “School Personnel,” “Higher Education Personnel,” “Higher Education Students,” and those working at “State-Owned or Operated Congregate Facilities.”
 - Includes allowance for medical and religious exemptions /accommodations to vaccine mandate – with the alternative requirement for at least weekly testing.
- Executive Orders also mandate the wearing of facemasks by all individuals ages two and over who are able to medically tolerate a face covering when indoors in a public place.
- **February 9, 2022:** Governor Pritzker announced plans to lift the statewide indoor mask mandate on February 28, but leaving the mandate in place for now at schools, day cares, health care facilities, congregate care facilities, and on public transportation.
 - Governor Pritzker is appealing a TRO issued on Feb. 7 against statewide mask mandate at K-12 schools.
- City of Chicago announced on Feb. 9 that it too plans to lift Chicago’s mask and vaccine card mandates at the end of February if the COVID-19 cases continue to fall.
- City of Chicago still mandates vaccination for all employees, as well as contractor personnel, and vendors who have regular direct contact with City employees or volunteers.
 - City of Chicago vaccine mandate for employees upheld in December in two labor arbitrations.

Local or Industry-Specific Mandates

Local Jurisdictions Mandating Vaccination

New York City

- Private employers must exclude unvaccinated individuals from workplaces in NYC.
- All workers entering an employer's office/facility must either (1) submit proof of at least one dose of a vaccine (and a second within 45 days) or (2) request a reasonable accommodation based on a disability or sincerely held religious belief.
- [Order to Require COVID-19 Vaccination in the Workplace](#)

International Travel Issues

- Canada
- Quarantine requirements in some countries for unvaccinated

Vaccine Mandate Litigation

Injunction Actions Against Vaccine Mandates Largely Unsuccessful

- In cases involving vaccine policies, courts have consistently found that a loss of employment is not irreparable harm.
 - *O’Hailpin, et al. v. Hawaiian Airlines*, Case No. 2022-cv-00007 (D.HI Feb. 2, 2022) (denying TRO; “[i]n the employment context, discharge and its associated consequences do not ordinarily constitute irreparable harm, no matter how ‘severely they may affect a particular individual,’ quoting *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974)).
 - *Bauer v. Summey*, 2021 WL 4900922, at *18 (D.S.C. Oct. 21, 2021) (concluding that loss of employment is not “an irreparable injury because it is fully compensable by monetary damages” (citations omitted))
 - *Mass. Corr. Officers Federated Union v. Baker*, 2021 WL 4822154, at *7 (D. Mass. Oct. 15, 2021) (stating that the harm of employment loss is not irreparable for the purposes of an injunction).
 - *Beckerich v. St. Elizabeth Med. Ctr.*, 2021 WL 4398027, at *6 (E.D. Ky. Sept. 24, 2021) (finding that loss of employment is not an irreparable injury because it can be compensated with monetary damages, and “wrongful termination claims exist for that very reason — whether brought under the ADA, Title VII, or some other state or federal law”).
 - *Valdez v. Grisham*, 2021 WL 4145746, at *12 (D.N.M. Sept. 13, 2021) (concluding that being terminated or prevented from working as a nurse is not irreparable harm).

Vaccine Mandate Litigation in Union Setting

- As in the non-union setting, injunction actions involving private employers not successful.
 - The Norris-LaGuardia Act generally prohibits federal courts from issuing injunctions in labor disputes.
 - Efforts by unions to seek a “reverse *Boys Markets* injunction” in aid of grievance arbitration have also failed. First a union needs to show the employer is refusing to arbitrate a contractual grievance. Second, the unions have the same problem of plaintiffs in the non-union setting of not being able to show irreparable harm.
 - Some exceptions for temporary injunctive relief pending arbitration in public sector under state labor laws.
- Vehicles to challenge vaccine mandates are contractual grievances and ULP charges with the NLRB.
- In grievance arbitration, issue is whether violates a CBA if done without the Union’s agreement.
 - Employers are generally relying on the discretion reserved to them under the management rights and/or health and safety provisions in the CBA to adopt reasonable rules /policies to protect employees in the office.
 - Unions may also allege a mandate violates the non-discrimination provision in a CBA (mirrors issues in EEOC charges), and/or the “just cause” standard for discipline. Both may be grieved separately on individual basis.
- In the NLRB setting, the issue is whether the employer violated the National Labor Relations Act by implementing a mandate without satisfying its bargaining obligation with the union.
 - A vaccine mandate as a condition to coming to work and/or that may lead to discipline is a mandatory subject of bargaining. Generally, issue is satisfying “effects bargaining” –to agreement or impasse before implementing.
- In arbitration and ULP charge setting, “past practice” evidence not helping unions. (See City of Chicago).

Disability Accommodation Claims

Typical Claims and Standard

- Types of claims:
 - Medical condition contraindicated for vaccination
 - Allergy to vaccine ingredient(s)
 - Prior COVID-19 infection prevents vaccination
- Title VII standard:
 - Employers may require people with disabilities to meet a qualification standard applicable to all employees, such as a safety-related standard requiring COVID-19 vaccination, if the standard is job-related and consistent with business necessity.
 - Employers cannot require compliance for employees with disabilities (and therefore must accommodate) unless it can demonstrate that the individual would pose a “direct threat” to the health and safety of the employee or others in the workplace.
 - Direct threat = “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation
 - Two-step process: (1) Is there a direct threat? (2) If so, would a reasonable accommodation reduce or eliminate the threat?

Disability Accommodation Claims

How do we determine whether a direct threat exists?

- Determine whether the employee can safely perform the essential functions of the job by reviewing:
 - Duration of the risk
 - Nature and severity of the potential harm
 - Likelihood that the potential harm will occur
 - Imminence of the potential harm
- Base assessment on reasonable medical judgment that relies on the most current medical knowledge about COVID-19, including:
 - Level of community spread
 - Statements by the CDC and/or the employee's health care provider
- Also consider the workplace, e.g.:
 - Does the employee work alone or with others, inside or outside?
 - How well is the workplace ventilated?
 - How frequently and for how long with the employee interact with co-workers, visitors, etc.?
 - How many others are in the workplace, and what is their vaccination status?

Religious Accommodation Claims

Typical Claims and Standard

- Types of claims:
 - “My body is a temple”
 - Objection to vaccines developed using cell lines developed from aborted fetal cells
 - Reliance on natural medicines only
- Title VII standard:
 - Employees whose sincerely held religious beliefs, practices, or observances conflict with a vaccine mandate may be entitled to a reasonable accommodation.
 - Generally, an employer should assume a religious accommodation request is based on sincerely held religious beliefs, but an employer may make a “limited factual inquiry” and seek additional support if it has an objective basis for questioning the religious nature or sincerity of the belief.
 - Even if an employee has a sincerely held religious belief that prevents vaccination, an employer does not need to offer a reasonable accommodation if it poses undue hardship (i.e., more than *de minimis*, or minimal, cost) to the employer.

Potential Accommodations

- Standard workplace safety protocols (e.g., masking and distancing)
- Staggered shifts
- Changes to the work environment (e.g., improving ventilation systems or limiting contact with others)
- Telework/remote work, if feasible
- Reassignment to an open position in a different workspace

Other Possible Claims

- New York State's new whistleblower law:

The new law eases employee obligations prior to bringing a whistleblower claim. Previously, whistleblowers had to afford employers a notice and cure period. Employees were required to bring the activity, policy, or practice that was the subject of the disclosure to the attention of a supervisor of the employer and afford the employer a reasonable opportunity to correct such activity, policy, or practice before disclosing it to a public body. The new law now allows employees to forgo the employer notification requirement under certain circumstances, including where there is an imminent and serious danger to the public health or safety.

- For example, an employee could claim allowing unvaccinated employees or visitors on-site pose an imminent danger to public health or safety

- Claims that employee contracted COVID-19 at work due to failure of employer to mandate vaccines and/or having lax COVID safety protocols:

- Likely preempted by Workers' Compensation laws
- However, could still face ADA accommodation, religious accommodation, or FMLA retaliation

Benchmarking Survey

Companies Suspending Vaccine Mandates After Either Nationwide Injunctions or SCOTUS's OSHA Decision

- **Amtrak:** halted its vaccination requirement after a court blocked enforcement of an executive order by President Biden instructing federal contractors to impose such mandates. **Source:** [The New York Times](#), December 14, 2021.
- **Boeing:** suspended a vaccination requirement for employees after the stay of the federal contractor vaccination mandate. **Source:** [The New York Times](#), December 17, 2021.
- **General Electric:** GE suspended its Covid vaccine and testing requirement after the Supreme Court blocked the Biden administration's mandate. **Source:** [CNBC](#), January 14, 2022.
- **Starbucks:** With more than 90% of its 220,000 U.S. employees having already reported their vax status, Starbucks suspended its vax-or-test rule after the Court's decision. **Source:** [Reuters](#), January 19, 2022.
- **Stellantis:** Manufacturer of Jeep SUVs and Ram pickup trucks ends its vaccine mandate for non-union salaried workers in the U.S. (after 97% of affected employees received a vaccine or an exemption). **Source:** [Detroit News](#), January 27, 2022.

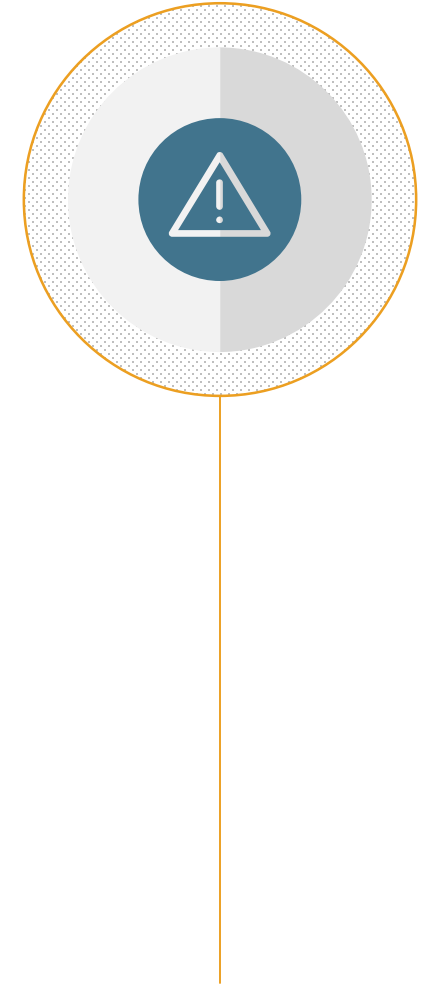
Examples of Companies Continuing to Mandate Vaccination

- **Anthem:** Employees must be fully vaccinated to enter offices.
- **Cisco:** Only vaccinated “critical workers” may enter the office.
- **Equinox:** Employees must be vaccinated to enter NYC facilities.
- **Ford:** U.S. salaried employees must be vaccinated.
- **Goldman Sachs:** Eligible employees entering offices must be boosted.
- **Lyft:** Corporate employees entering offices must be vaccinated.
- **Morgan Stanley:** U.S. employees must be vaccinated.
- **NBCUniversal:** U.S. employees entering offices must be vaccinated.
- **Saks:** Corporate employees must be vaccinated.
- **Walmart:** Corporate associates and new hires must be vaccinated.

Source: [NBC News](#), January 25, 2022.

Vaccine Survey Results (22 responses)

- Whether kept mandate after OSHA decision
 - 7 or 31.82% kept mandate
 - 0 rescinded
 - 4 or 18.18% still deciding how to proceed
 - 11 did not have a mandate pre-OSHA decision
- Whether will impose vaccine mandate now
 - 2 or 9.1% said definitely not
 - 8 or 36.36% said unlikely
 - 2 or 9.1% said maybe
 - 0 said likely
 - 0 said almost certainly



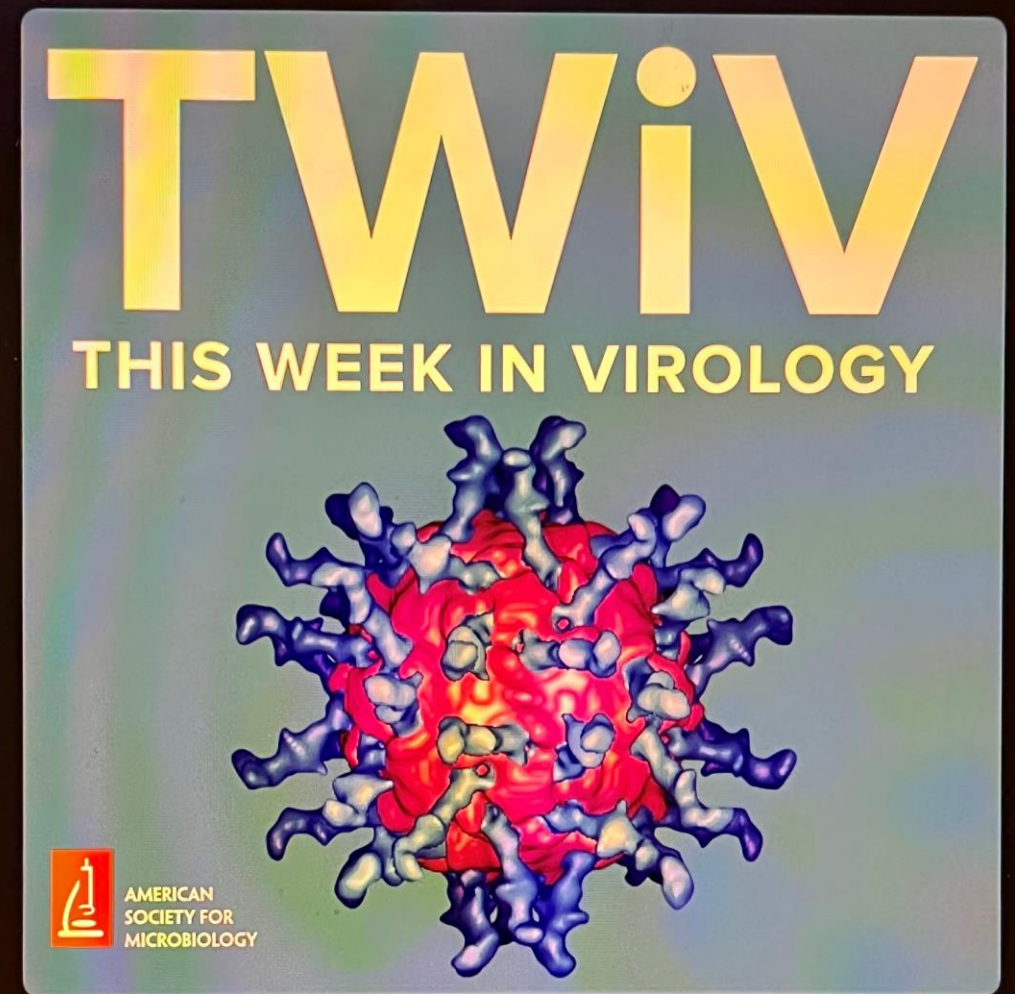
Vaccine Survey Results By Industry

- Technology
 - Four did not have mandate and unlikely to impose one now
 - Two had and are keeping
- Manufacturing
 - Two did not have and are unlikely to impose
 - One did and is still deciding how to proceed
- Construction: one did not have a mandate and definitely will not impose one
- Government contractor: one had a vaccine mandate and is still deciding how to proceed
- Financial Services/Insurance
 - Two did not have a mandate: one maybe will impose one now, one unlikely to impose one
- Retail
 - Two kept mandate
 - One did not have one and unlikely to impose
- Non-profit
 - One didn't have one and definitely won't
 - One did and kept
- Education
 - Two had a mandate: one kept; the other still deciding how to proceed

A Little Bit of Science

This Week In Virology

- Host: Dr. Vincent Racaniello: Higgins Professor in Department of Microbiology and Immunology at Columbia University; Ph.D. Mount Sinai Medical Center; MIT post-doctoral
- Dr. Daniel Griffin: Columbia University Vagelos College of Physicians and Surgeons, research scientist in the department of biophysics, instructor of clinical medicine, and a member of the division of infectious diseases. M.D. from NYU; Ph.D. from Elmezzi Graduate School of Molecular Medicine



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19 clinical update #99 with Dr. Daniel
/irology — January 28, 2022 This W

This Week In Virology January 28, 2022 Episode

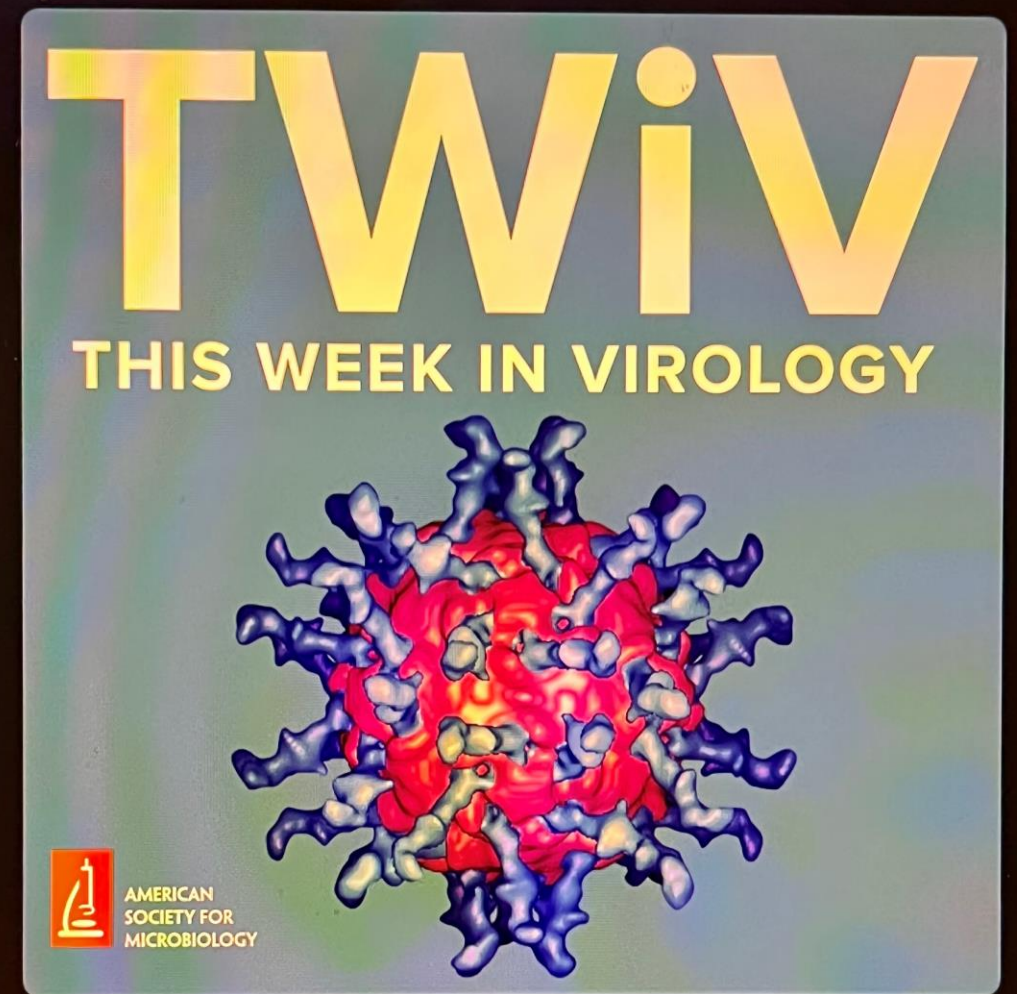
- Chasing variants



- Vaccine efficacy re Omicron variant and hospitalization



- Severity of Omicron v. Delta



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What Can You Do Now And What Are The Risks?

To Impose Or Not To Impose: That Is A Question

- Impose or not impose a vaccine mandate?

- Impose a booster requirement?



- Mandate only for a segment of employee population?

Risks Of Imposing A Vaccine Mandate, Or Not

Impose

- Injunction challenge – but you should win (closer call in union setting)
- Potentially violate state law (unless healthcare employer covered by CMS mandate)
- Many accommodation/exemption requests and failure to accommodate litigation
- Potential loss of employees
- If a limited mandate: disparate treatment/impact; trickier accommodation issues
- Will imposing materially move the needle to more getting vaccinated or not?

Not Impose

- From a legal standpoint, not high risk at this point.
- But, will not imposing lead to:
 - More employee sickness, deaths?
 - Higher health care costs?
 - OSHA claims/investigations?
 - Employee resignations from those who would prefer to work for a company that requires vaccination?
 - Potential loss of business, e.g., from unvaccinated salespeople unable to make in-person sales calls to sites that allow vaccinated visitors only?
 - Staffing difficulties due to unvaccinated workers being out more often and for longer periods?
 - Resistance to returning to the office?

A thought on vaccine hesitancy



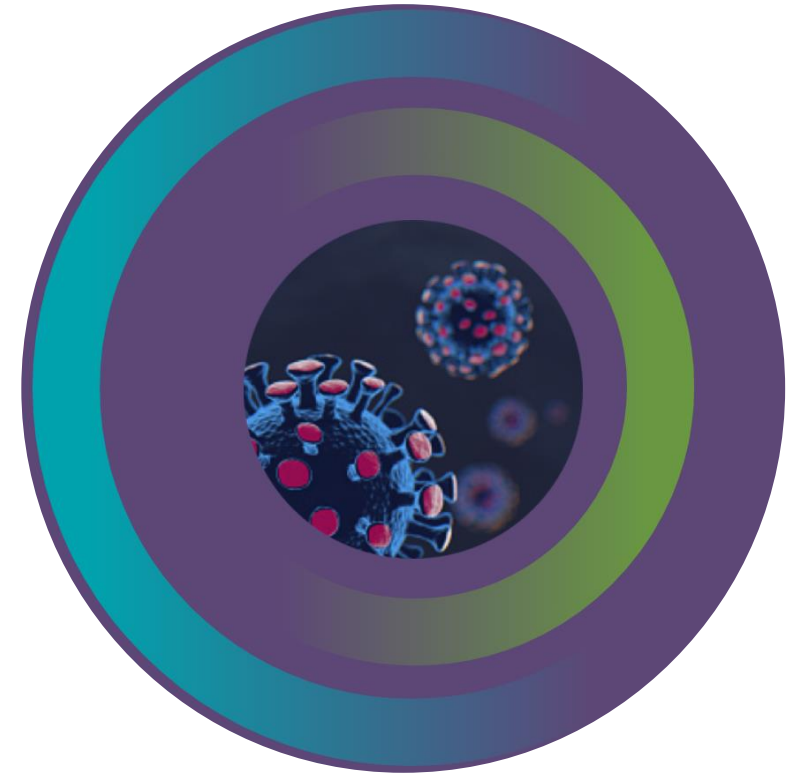
Epstein Becker Green Coronavirus Resource Center

Epstein Becker Green Coronavirus News and Updates

Employers throughout all industries, and particularly those within health care, are now grappling with how to deal with the various implications of the coronavirus (COVID-19) on their businesses and workforce.

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BENEFITS	CORPORATE/BUSINESS/RETAIL
DATA/PRIVACY/HIPAA	EMPLOYMENT AND LABOR
FDA	FFCRA/CARES ACT
GLOBAL WORKFORCE MANAGEMENT	GOVERNMENT RESOURCES
HEALTH CARE	IMMIGRATION
OSHA	RETURN TO WORK
WAGE AND HOUR	



<https://www.ebglaw.com/coronavirus-resource-center/>



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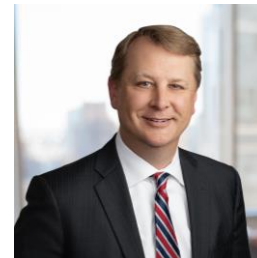
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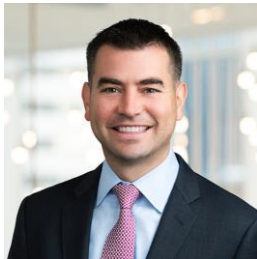
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