Despite Fifth Circuit Decision, CMS Vaccine Mandate Remains Stayed in 24 States

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On December 15, the Fifth Circuit Court of Appeals granted the Biden Administration a *limited* reprieve of the previously issued near-nationwide injunction by a Louisiana federal court. As we previously reported, the two decisions issued by the Federal courts in Louisiana and Missouri had effectively combined to bar enforcement on a nationwide basis of the Centers for Medicare and Medicaid Services ("CMS") vaccine mandate ("Mandate").

Even after the Fifth Circuit's decision, however, the Biden Administration is still barred from enforcing the Mandate in almost half the states. Under the Fifth Circuit's order, the Biden Administration is barred from enforcing the Mandate in the following **14 states**:

Alaska	Mississippi
Arizona	Montana
Georgia	Ohio
Idaho	Oklahoma
Indiana	South Carolina
Kentucky	Utah
Louisiana	West Virginia

The Fifth Circuit's decision does not impact the injunction issued by the federal court in Missouri, which was upheld by the Eighth Circuit. Therefore, the Biden Administration is also barred from enforcing the Mandate in the following **10 states**:

Alaska	Nebraska
Arkansas	New Hampshire
Iowa	North Dakota

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Kansas	South Dakota
Missouri	Wyoming

On December 16, the Biden Administration challenged these injunctions, asking the U.S. Supreme Court to permit it to impose the CMS Mandate nationwide.

CMS previously notified state agencies that, in light of the nationwide injunction that had been issued by the Louisiana and Missouri federal courts, it was suspending activities related to the implementation and enforcement of the Mandate "pending future developments in the litigation." At t the time this advisory was published, CMS had not issued any public statements regarding the status of its suspended enforcement of the Mandate in consideration of the Fifth Circuit decision.

Frost Brown Todd will be watching closely for the U.S. Supreme Court to issue its decision. We will keep you apprised of all relevant future developments. For information about these decisions, please contact Catherine Burgett, Anne Duprey, Kyle Johnson, Jeff Shoskin, or any attorney in Frost Brown Todd's Labor and Employment Practice Group.

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