

## Current Lawsuits Regarding Compulsory Vaccination or Testing

(last updated Sept. 8, 2021)

### Universities

#### *Indiana*

*Klaassen et al v. The Trustees of Indiana University*, 1:21-cv-00238 (2021). - This case was filed on June 21, 2021. Students requested declaratory and injunctive relief. The University requires all students and staff to be vaccinated. Exemptions are provided for medical, ethical, and religious reasons. Alternatives include online only courses or deferring the semester. If students are provided with an exemption, they will be tested twice a week, will be required to wear a face mask on campus. Note that the appellate court upheld the rational basis review set out in Jacobson regarding vaccine requirements.

- Status: A preliminary injunction was denied at the trial court level on July 18<sup>th</sup>. The appellate court denied a request for an injunction pending appeal on August 2, 2021. The Supreme Court denied the students application for injunctive relief on August 12, 2021.
- Location: Indiana, 7<sup>th</sup> Circuit.

#### *Loyola*

*Ryan Khanthaphixayet al v. Loyola Marymount University et al.* 2:21-cv-06000 (C.D. Cal, 2021) – Student lawsuit, hinges on a different treatment argument, because students who do not receive a vaccine will need to be tested and wear masks per school policy. References the difference between other vaccinations because of the emergency use authorization.

- Status: August 9<sup>th</sup> - TRO denied, order to show cause for preliminary injunction.
- Location: California, 9<sup>th</sup> Circuit.

#### *George Mason*

*Zywicki v. Washington et al*, 1:21-cv-00894 (E.D Va, 2021) – Law professor with natural immunity as a result of previously contracting Covid-19 suing over imposition of mask and testing requirements.

- Status: August 3<sup>rd</sup>. – Complaint filed
- Location: Virginia, 4<sup>th</sup> Circuit

#### *UMass-Boston & Lowell*

*Harris v. University of Massachusetts Lowell*, 1:21-cv-11244 (D. Mass, 2021) – Students sue both Boston and Lowell campuses, policy requires all students to be vaccinated to be on campus, the policy does not extend to faculty. One student has no exemption but is effectively unable to transfer or attend class online because of a sports scholarship, one student is raising a religious objection – the school denied this on the basis that vaccinations are not violative of the Roman Catholic tenants. Arguments included in the complaint: i) Universities don't have the authority to impose a vaccination requirement under Jacobsen, the Board of Health is the authority that would do so, and the Board has not mandated

vaccines; ii) Currently, the vaccine is only approved for emergency use and guidance indicates that it cannot be mandated because of that emergency use provision, iii) This is a strict scrutiny case, because the case is restricting the plaintiff's fundamental right to refuse medical treatment.

- Status: July 30<sup>th</sup> – Complaint filed
- Location: Massachusetts, 1<sup>st</sup> Circuit

### **California State University**

*Higley v. Cal. State Univ.*, 2:2021cv01126 (E.D. Cal., 2021) – Case hinges on students who had Covid-19 and recovered raising concerns about being required to take the vaccination after full approval is given. The argument is that their status makes them more susceptible to serious side effects of the vaccination, and there is currently no plan to pre-screen for that type of susceptibility.

- Status: August 8<sup>th</sup> – stipulated order to extend deadlines for Motion to Dismiss
- Location: California, 9<sup>th</sup> Circuit

### **VCOM Louisiana – prevents the enforcement of vaccine mandate**

*Magliulo et al v. Edward Via College of Osteopathic Medicine*, 3:2021cv02304 (W.D.LA, 2021) This is the first case where an injunction was granted to prevent a vaccine mandate from being enforced. However, Louisiana has a specific statute regarding vaccines that was in place prior to Covid-19. This statute requires exemptions from vaccination requirements based on a written dissent by the students.

While the school eventually granted the students exemptions from the vaccine mandate, based on constitutional grounds, they first denied them, and the standard they used was higher than the written dissent standard set out in state law. The school's restrictions on the unvaccinated students was found to restrict the students from completing the curriculum, which then defeats the purpose of the exemption, because the result is that the students are excluded. The judge then held that the statute doesn't have an exclusion mechanism that can be enforced by the schools, instead, the decision that unvaccinated students should be excluded can only be made by the Louisiana Department of Health.

Overall, this is a very state-specific ruling that is an interpretation of existing Louisiana law, which is unlikely to set a precedent for other states, or other schools.

- Status: August 17<sup>th</sup>, TRO granted.
- Location: Louisiana, 5<sup>th</sup> Circuit.

### **Hospitals**

*Bridges v. Houston Methodist Hospital*, 4:21-cv-01774 (S.D. Texas, 2021) Employees sued to prevent the requirement. The first claim was wrongful termination. Texas is an at will state, the state protects employees from wrongful termination for refusing to commit a criminal act. The court rejected this claim. The court further rejected a public policy argument that because the vaccines have only been approved for emergency use private employers cannot mandate their use, this argument was rejected. The court also makes a point of stating that a private employer requiring an employee to be vaccinated

is not coercive, it is simply a requirement of the employer, not unlike changing an office, or setting a start time.

- Status: June 12<sup>th</sup> – Dismissed. August 10<sup>th</sup> – Appeal pending.
- Location: Texas, 5<sup>th</sup> Circuit

### **Public Safety**

*Legarreta v. Macias et al*, 2:21-cv-00179 (D.N.M, 2021). Corrections officer in New Mexico filed a lawsuit to enjoin employer from terminating his employment pursuant to its “Mandatory COVID-19 Vaccination Directive.” Directive required COVID-19 vaccine as a condition of ongoing employment. Argues that employer’s directive violates federal law which governs the emergency authorization of “unapproved” medical products. Filed for injunctive relief and a TRO. TRO denied on March 4<sup>th</sup>, 2021.

- Status: June 3<sup>rd</sup> – Motion to dismiss for failure to state a claim and qualified immunity filed.
- Location: New Mexico, 10<sup>th</sup> Circuit.

### **Public Schools (Not Universities)**

*California Educators for Medical Freedom et al v. The Los Angeles Unified School District et al.*, 21-cv-02388 (C.D. Cal., 3/17/2021). Employees arguing against a vaccination requirement because the vaccines are only approved under emergency use authorization (EUA). The claims are that i) the requirement is preempted because of informed consent requirements set forth by the EUA, ii) due process issue because this is mandatory medical experimentation.

- Status: July 27<sup>th</sup> - Dismissed for lack of ripeness.
- Location: California, 9<sup>th</sup> Circuit.

### **Unions**

*International Brotherhood of Teamsters, Local 743 v. Central States Southeast and Southwest Areas Health and Welfare and Pension Funds*, 1:21-cv-03840 (N.D. Ill., 2021) The pension fund (employer) set an in-person return-to-work date of Sept. 7, and in May it circulated a vaccination policy that said employees who have not received a vaccine and do not have an approved religious or medical exception could not enter the work facilities. According to the lawsuit, the policy also stipulates that workers will have paid time off deducted from their paid time off bank for each workday they refuse to receive the vaccine and will not be able to report to work.

The union’s lawyers argue that the pension fund’s vaccine policy is a “mid-term change,” with respect to the “terms and conditions of” employment and that it creates a new condition of employment.

- Status: August 3<sup>rd</sup> – TRO denied
- Location: Illinois, 7<sup>th</sup> Circuit

*Tucson Police Officers Association vs. City of Tucson*, C20213869 (Pima County Superior Court, August 16, 2021) City passed an ordinance requiring all city employees, that were not exempt, to have proof of the first vaccination shot by August 24<sup>th</sup> – those that did not get the shot would be subject to a five-day

suspension. Union sued on two grounds: first, that state law prevented it, because the governor has an executive order in place preventing vaccine mandates by local governments; second, that this was done outside of the meet and confer process required by the collective bargaining agreement. The judge denied the temporary restraining order requested to prevent the mandate from going into effect on the 19<sup>th</sup>.

- Status: August 19<sup>th</sup> – TRO denied
- Location: Tuscon, AZ, State Court

*Washington Federation of State Employees vs Jay Inslee et. al.*, 21-2-01495-34 (Thurston Superior Court, 2021)

The Washington Federation of State Employees (WFSE) filed a lawsuit to prevent the Governor's proclamation for mandatory vaccinations from going into effect. The proclamation requires all state employees, higher education, childcare, and K-12 education employees, and most health and long-term care providers to be fully vaccinated with a recommended COVID-19 vaccine by October 18, 2021 as a condition of employment.

The union (WSFE) argues that the collective bargaining agreements obligate the State, before making a change to any mandatory subject of bargaining and the impacts of decisions effecting the terms and conditions of employment, such as wages, hours, and working conditions, to notify the WFSE and on demand to negotiate those matters with the WFSE.

The WFSE states that they made a request to bargain, but that the representatives sent by the State lacked the authority to bargain, which is why all of the WFSE's proposed compromises were denied. The union's cause of action are 1) that this refusal to bargain is an unfair labor practice, 2) that the proclamation is an impairment on the contract, because it excuses the State from the required good faith bargaining, 3) that an injunction should be granted because the legal rights of the employees will be harmed and that, because of the upcoming deadline, individuals may subordinate religious beliefs or medical conditions to continue their employment, suffering irreparable harm. The hearing is schedule for September 3, 2021.

- Status: September 3<sup>rd</sup> – Hearing
- Location: Washington, State Court

### **State Employees**

*Valdez et al v. Lujan Grisham*, 1:21-cv-00783 (D.N.M, 2021). This lawsuit is a mess. It's a class action, where the class consists of: state employees that will lose their employment if they are not vaccinated and do not have an exemption and children who can't show livestock at the state fair. The first argument made is related to a mandate of an unapproved drug – a claim that went up in flames on August 23<sup>rd</sup>. The second claim is that a vaccine mandate is a breach of substantive due process: it's a burden on fundamental liberties without a meaningful opportunity for a hearing. Plaintiffs file for a TRO and a preliminary injunction, based on the EAU argument, with a secondary argument that seems to be, regardless of the EAU, the vaccine was 'rushed.'

- Status: August 19<sup>th</sup> – Complaint filed

- Location: New Mexico, 10<sup>th</sup> Circuit

*Jane Does 1-6 et al v. Mills et al*, 1:21-cv-00242-JDL (D. ME, 2021). The lawsuit requests injunctive relief from Maine Governor's requirement that all health care workers be vaccinated by October 1<sup>st</sup>. The Governor uses the authority of an existing statute allowing the state to require vaccinations for health care workers to justify the requirement. Plaintiffs' lawsuit centers around the lack of exemptions for closely held religious beliefs. It appears that Maine's existing statutory authority doesn't have an exemption. TRO was denied because plaintiffs did not give notice to defendants.

- Status: August 26<sup>th</sup> – TRO denied
- Location: Maine, 1<sup>st</sup> Circuit

### **Entertainment**

*Norwegian Cruise Line Holdings Ltd v. Rivkees, M.D.*, 1:21-cv-22492 (S.D. Florida, 2021) Cruise line sued Florida to prevent the state from prohibiting the cruise line from requesting documentation proving vaccination status. Court found that there was a substantial likelihood that NCLH was likely to prevail on the merits and granted an injunction. The first argument is that the FL law is a restriction on commercial speech and that the law does not meet intermediate scrutiny, court found it likely that it would not meet the standard. The second argument was that this law is an unjustified burden on interstate commerce, under the dormant commerce clause, and would fail the *Pike* balancing test. The third argument was a preemption claim. The court granted the injunction saying that HCLH et al would be irreparably damaged without the injunction.

- Status: August 10, 2021, Notice of Appeal against the preliminary injunction filed.
- Location: Florida, 11<sup>th</sup> Circuit.

### **Threatened Suits, no current filing 8/17/2021**

- Hawaiian First Responders
- Staten Island and restaurant owners

### **Dismissed, but notable**

- *Neve v. Birkhead et al*, case against sheriff's department in North Carolina, voluntarily dismissed by plaintiff, June 28, 2021. (M.D.N.C., 2021).
- United airlines pilots – dismissed on procedural grounds.

### **Other**

In notable, but not on point, news there have been [a series of lawsuits](#) in Pennsylvania to force schools to adopt a mask mandate, in North Allegheny there was a successful TRO, while in Canonsburg the bid was unsuccessful.