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Federal Court Upholds Employer's COVID-19 Vaccine Mandate

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On June 12, 2021, a federal District Court in Texas in *Bridges, et al v. Houston Methodist Hospital et al*, Docket No. 4:21-cv-01774 (S.D. Tex. Jun 01, 2021) dismissed a case challenging a hospital's mandatory COVID-19 vaccination policy for employees. This is the first court opinion addressing the ability of employers to require employees to be vaccinated against COVID-19. The decision is also notable in that it rejects the argument, which has been advanced in other cases challenging mandatory vaccination policies in the employment context, that such policies are prohibited by the federal Food, Drug, and Cosmetic Act ("FDCA").

The lawsuit was initially filed on behalf of 117 employees after their employer, the Houston Methodist Hospital, instituted a policy requiring employees to receive a COVID-19 vaccine as a condition of ongoing employment. Employees who were not vaccinated by the applicable deadline were to be placed on a two-week unpaid suspension to allow them to comply with the policy. Under the policy, those who ultimately did not comply would be terminated.

In the complaint, Plaintiffs asserted that: (1) the employees whose employment was terminated as a result of this policy were wrongfully terminated in violation of Texas law; (2) the vaccine mandate violated public policy of the state of Texas, and (3) the vaccine mandate violated the FDCA and federal law regarding human subjects in research (45 C.F.R. § 46.101 *et. seq.*).

1. **Wrongful Termination**: Under Texas law, the court found, an employee can only state a claim for wrongful termination if he can show that he was required to perform an illegal act, and that he was discharged solely because of his refusal to engage in the illegal act. Here, Plaintiffs were not terminated for refusing to perform an illegal act, but instead for refusing to receive a vaccine. The court therefore held that Plaintiffs failed to state a claim for wrongful discharge under Texas law.

2. **Violation of Public Policy**: The court dismissed Plaintiffs' public policy arguments because Texas law does not recognize a public policy exception to at-will employment. In any case, the court also noted that a mandatory vaccine requirement is consistent with public policy, as the Supreme Court has previously held that state-imposed quarantine and vaccination requirements do not violate due process.
3. **Violation of the FDCA**: The court rejected Plaintiffs' arguments that the vaccine requirement violated the federal FDCA because, according to the court, this law: (1) does not apply to private employers, and (2) does not confer a private right to sue the government or an employer. Instead, the FDCA merely authorizes the Secretary of Health and Human Services to approve products for emergency use if the Secretary ensures that recipients are informed of the option to accept or refuse the product. According to the order, plaintiffs have therefore "misconstrued this provision," which does not impose any obligations on private employers, such as the employer here.
4. **Federal Law Governing Medical Experimentation**: The court also rejected Plaintiff's arguments that the vaccine mandate violated 45 C.F.R. 46.101, *seq*., which protects the rights of human subjects in research. In the complaint, Plaintiffs argued that they were subject to medical experimentation because they were required to receive a vaccine that has not been fully approved by the federal Food and Drug Administration. According to the court, this claim "misrepresented the facts" because the hospital's employees are not participants in a human trial, but instead merely employees subject to a vaccination requirement.

In its decision, the court also cited recent Equal Employment Opportunity Commission guidance, which states that employers can require employees to be vaccinated, subject to the obligation to provide reasonable accommodations to employees with legitimate medical or religious reasons for not being vaccinated. The court also rejected Plaintiffs' arguments regarding the Nuremberg Code, emphasizing that equating a COVID-19 vaccine mandate to forced human medical experimentation during the Holocaust is "reprehensible," and that in any event, the Nuremberg Code does not apply to private employers.

The Order concludes with a strong endorsement of mandatory vaccine policies in employment, stating that Plaintiffs "can freely choose to accept or refuse a COVID-19 vaccine; however, if [they] refuse, [they] will simply need to work somewhere else…Every employment includes limits on the worker's behavior in exchange for his remuneration. This is all part of the bargain."

On June 14, 2021, Plaintiffs appealed the dismissal to the Court of Appeals for the Fifth Circuit.

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