

# Huge Win! Federal Judge Temporarily Blocks COVID Vaccine Mandate for Health Workers in 10 States

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by [Ray L. Flores II, Esq., The Defender](#)

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A federal court on Monday temporarily blocked the Biden administration's [COVID vaccine](#) mandate for health workers at hospitals that receive federal funding, providing a temporary reprieve for healthcare workers in 10 states who faced having to be fully vaccinated by Jan. 4, 2022, or lose their jobs.

U.S. District Court Judge Matthew Schelp issued a [preliminary injunction](#) against the Centers for Medicare & Medicaid Services (CMS) [Emergency Regulation](#) requiring nearly every employee, volunteer and third-party contractor to receive their first dose by Dec. 6 and meet the Jan. 4, 2022 deadline for both doses.

The injunction followed from a [lawsuit](#) filed Nov. 10 by a coalition of 10 states, led by Missouri. The lawsuit alleged the mandate violated the [Administrative Procedures Act](#) and the [Tenth Amendment](#) to the U.S. Constitution.

According to Missouri Attorney General Eric Schmitt, the CMS threatened to turn some of last year's "healthcare heroes" into this year's unemployed.

The preliminary injunction pending trial prevents the Biden-Harris administration from enforcing the CMS mandate in the states of Missouri and Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota and New Hampshire.

In his ruling, Judge Schelp wrote:

"The independent power of the states serves as a check on the power of the Federal Government: by denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power."

The court's findings of questionable short- and long-term vaccine efficacy and [breakthrough disease transmission](#) are long overdue.

Most exciting are the judge's comments on CMS rejecting mandate alternatives in those with [natural immunity](#) acquired from a previous coronavirus infection.

[Children's Health Defense](#) (CHD) is encouraged that the judge determined, "If judicial review is to be more than an 'empty ritual,' the Court here must demand something more than the explanation offered for the action taken by CMS here."

Judge Schlep opined:

"In general .. the lack of data regarding vaccination status and transmissibility – in general – is concerning. Indeed, CMS states that 'the effectiveness of the vaccine[s] to prevent

disease transmission by those vaccinated [is] not currently known.'

"CMS also admits that the continued efficacy of the vaccine is uncertain. ('[M]ajor uncertainties remain as to the future course of the pandemic, including but not limited to vaccine effectiveness in preventing breakthrough disease transmission from those vaccinated, [and] the long-term effectiveness of vaccination[.]')."

It is likely the Biden administration will either seek an emergency injunction pending appeal in the 8th Circuit Court, or will wait for rulings from cases filed in three other states.

These challenges are significant as there currently are lawsuits fighting the CMS Emergency Regulation filed on behalf of more than half of U.S. states.

In closing, Judge Schlep opined:

"... Plaintiffs likely can show the CMS mandate is arbitrary and capricious because the evidence does not show a rational connection to support implementing the vaccine mandate, the mandate's broad scope, the unreasonable rejection of alternatives to vaccination ..."

Commenting on the ruling, CHD President and General Counsel Mary Holland said:

"It obviously appears the tide is turning. The 5th Circuit's temporary restraining order against '[fatally flawed](#)' Biden Occupational Safety and Health Administration (OSHA) employer vaccine mandate and subsequent [suspension](#) by OSHA of the mandate confirm this fact."

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