



STATE OF INDIANA

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Vaccine Mandate Update

President Biden's administration has ordered five vaccine mandates that impose different obligations on different groups. They are summarized here as of March 21, 2022. Attorney General Rokita's role with respect to these mandates is to defend the State and the State's interests (its contracts, employees, laws, programs, etc.) against federal government overreach.

1. OSHA mandate – Under President Biden's executive mandate, the federal Occupational Safety and Health Administration, (OSHA) issued an emergency standard on November 4, 2021, that would require all U.S. employers with at least 100 employees to require all employees (including state employees) to be vaccinated or be tested weekly at the employee's cost but on the employer's time. Attorney General Rokita filed a lawsuit challenging the emergency standard. While one federal appeals court prohibited enforcement of the mandate, another stepped in and revoked the stay, allowing OSHA to enforce the vaccine mandate. Indiana and other states filed an appeal with the U.S. Supreme Court. After the Supreme Court issued a preliminary stay prohibiting OSHA from enforcing the vaccine mandate, OSHA withdrew the mandate, with the result that the case has been dismissed as moot.

2. Federal Contractor Mandate – President Biden issued Executive Order 14042 requiring employees of most federal contractors or suppliers to be vaccinated, with no testing or masking option. The order includes all *new* federal contracts, and federal agencies have even been pressuring *existing* contractors to require employee vaccination. Because this mandate impacts state entities, Attorney General Rokita filed suit challenging the contractor mandate and asked for an injunction. Before the judge in Attorney General Rokita's suit could rule on that request, a different court issued a nationwide injunction against the contractor mandate. The federal government asked a U.S. Court of Appeals to put that injunction on hold, but the court refused. In the meantime, the court in the lawsuit filed by Attorney General Rokita issued an injunction barring enforcement in several states, including Indiana. As a result, federal contractors are not mandated by the federal government to impose vaccination requirements on their workers.

3. Federal Employee Mandate – President Biden issued Executive Order 14043 requiring all federal employees to be fully vaccinated, with no testing or masking option, by November 22, 2021. Because this order applies only to federal employees who are subject to federal orders and not state employees, Attorney General Rokita did not challenge this mandate. A federal court issued an injunction on January 21, 2022, stating that the federal government cannot enforce this mandate.

4. Medicare/Medicaid Provider Mandate – Under President Biden's executive mandate, the Centers for Medicare and Medicaid Services ("CMS") issued a rule directing any facility receiving Medicare or Medicaid dollars to require vaccination of all workers having direct or

indirect patient contact, with no testing or masking option. Because the State administers Medicaid, Attorney General Rokita filed suit seeking an immediate injunction against the mandate, and the court granted that injunction. The federal government appealed, and on January 13, 2022, the U.S. Supreme Court upheld the rule, and allowed CMS to mandate vaccines for all employees in Medicaid or Medicare funded facilities. On February 4, Attorney General Rokita filed an amended complaint to address recent CMS guidance making clear that the state themselves, not the federal government, are expected to bear responsibility for implementing the misguided mandate. The Fifth Circuit is considering whether to permit that claim to go forward. The CMS rule directly contravenes Indiana state law by requiring certain state employees be vaccinated as a condition for their state employment. Indiana law expressly prohibits state or local units of government from issuing or requiring proof of immunization status.

5. Head Start Mandate – Pursuant to President Biden’s executive mandate, the federal Department of Health and Human Services (HHS), a federal agency in the Biden Administration, issued a rule mandating vaccination of all staff at childcare and child development facilities that receive federal Head Start funds *and* requiring all children at least 2 years old attending such facilities to wear masks. Head Start programs promote the school readiness of infants, toddlers, and preschool-aged children from low-income families. The mandate will impact the State’s mission to educate its youngest Hoosiers, a core State responsibility. Attorney General Rokita filed suit challenging the rule and has asked a federal court for an immediate injunction against the Head Start rule. A temporary injunction has been granted, blocking these requirements for now.

Exceptions to the Vaccination Mandates

Generally, the federal mandates contemplate exceptions as provided by law. Those exceptions may include religious, medical, or other exemptions. Whether an employee is entitled to an exception may depend on the circumstances.

Rights of Private Employers

Private employers may require vaccines as a condition of employment. HEA 1001-2022 provides that an employer may not impose a requirement that employees receive an immunization against COVID-19 unless the employer provides individual exemptions that allow an employee to opt out of the requirement on the basis of medical reasons, religious reasons, or immunity from COVID-19 acquired from a prior infection with COVID-19. If testing is permitted or required, employers are not required to pay for it.

Limits of Public Employers

State and local government employers may not ask employees to provide documentation of vaccination status (Ind. Code ch. 16-39-11, also known as the Indiana Vaccine Passport Law).

The above is provided for informational purposes only and is not intended to be legal advice.