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Insights

Vaccine Verdict: 7th Circuit Declares Indiana University's Vaccine Mandate Constitutional

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By: and Virginia A. Talley

The 7th Circuit Court of Appeals (the "Court") recently issued a unanimous appellate decision in *Klassen, et al. v. Trustees of Indiana University*, ruling that Indiana University's (the "University") COVID-19 vaccine mandate (the "Mandate") did not violate any constitutional right. The University allows exemptions from the Mandate for medical and religious reasons, but requires exempted students to wear a mask, practice social distancing, and get tested regularly for COVID-19.

The student-plaintiffs argued the Mandate violated the Due Process Clause of the Fourteenth Amendment. However, seven of the eight plaintiffs had either been eligible for an exemption or were granted an exemption by the University. Despite the plaintiffs' vigorous claims of the University's alleged violations of constitutional law, the Court's opinion emphasized the right of universities to set conditions of enrollment, as well as the right of students to seek education at other institutions.

In its ruling, the Court relied on precedent set by *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), whereby the Supreme Court held that a state may mandate vaccinations for all adult members of the public and impose criminal convictions for refusal to receive vaccinations. The two key differences making *Klassen* "easier than the *Jacobson* case," as Judge Easterbrook wrote, is that (1) the University allows exceptions to the Mandate, and (2) the question at issue was whether a university can require vaccination as a condition of attendance, not whether an entire state is allowed to require every member of the adult public to be vaccinated.

Judge Easterbrook also noted that "vaccination requirements, like other public-health measures, have been common in this nation." This decision affirms the legitimate public health interest in vaccine requirements and holds that vaccine mandates are not, by themselves, unconstitutional, particularly when the entity requiring the vaccine offers exceptions to the mandate and provides individuals with alternative safety measures in the event they choose not to get vaccinated. Although the Court's ruling sent a clear message about the enforceability of vaccine mandates to date, subject to applicable exemptions, the students plan to take their case to the Supreme Court for review.

What can we learn from the Court's decision?

This decision provides insight as to how vaccine policies should be developed and implemented to be enforceable. In this case, the University's vaccine policy allowed applicable exemptions, and students had a choice to either receive the vaccine, or utilize alternative options to mitigate the spread of COVID-19 including wearing a mask, practicing social distancing, and regularly getting tested for the virus. While this case involves a public institution, the Court examined factors that public and private entities should consider when implementing vaccination policies and practices.

In efforts to ensure vaccine policies are enforceable and do not violate applicable laws, entities may wish to review that their vaccination policies to ensure that such policies allow for appropriate exceptions, including exemptions for medical and religious reasons that may be required by the Americans with Disabilities Act, Title VII of the Civil Rights Act, and other applicable laws. Entities should also consider whether their policies provide for alternative safety measures for those who choose not to receive the COVID-19 vaccine.

While this decision provides some answers as to what courts may look to when asked to decide whether a vaccine policy is lawful and enforceable, questions remain about the future of vaccine mandates. For example, what medical conditions necessitate exemptions from a vaccine mandate? Further, some states are seeking to restrict or prohibit vaccine mandates or proof-of-vaccination requirements, which could affect the enforceability of vaccination policies of both public and private entities, as such laws may override policies that the federal courts have otherwise deemed legal.

Monitoring case decisions and legislation regarding vaccine mandates and vaccination policies will be important in the coming months to ensure your vaccination policies remain lawful and enforceable as the debate over vaccine requirements continues to develop.

If you have questions about your options regarding vaccination policies or best practices related to vaccination mandates, or if your business needs assistance developing, implementing, or updating vaccination policies or enforcement plans, please contact **Alexandria M. Foster**, **Virginia A. Talley**, or any other member of Krieg DeVault's **Labor and Employment Law team**.

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