CARLTON FIELDS

Federal Court Upholds University's Vaccine Mandate

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In a case of first impression, an Indiana federal district court recently rejected a constitutional challenge brought by several students to a public university's requirement that students receive the COVID-19 vaccine as a condition of returning to campus. Rejecting the plaintiffs' bid for a preliminary injunction precluding Indiana University from enforcing its vaccine requirement, the court concluded that the students' constitutional claims were not likely to succeed on the merits because "Indiana University is reasonably pursuing a legitimate aim of public health for its students, faculty, and staff." More specifically, the district court explained:

Under guiding principles of federalism, our Constitution preserves the power of the States, within constitutional limits, to adopt laws to provide for public health and safety. Twice the United States Supreme Court has upheld state authority to compel reasonable vaccinations. The States don't have arbitrary power, but they have discretion to act reasonably in protecting the public's health.

Although this case involves a public university and constitutional claims that cannot be made against private universities, and the court's recent ruling only addresses the plaintiffs' request for immediate relief from the university's mandate and is not a final decision on the merits (and is subject to possible appellate court review), the ruling nevertheless contains several important takeaways.

What Passes Muster Today May Not Pass Muster Tomorrow

It is no secret that the COVID-19 pandemic continues to evolve on an almost daily basis. Thus, even while declining to enjoin Indiana University from enforcing the vaccine requirement at this time, the court explained that it was evaluating "a college student's right to refuse a vaccine, today at this stage of the pandemic." It suggests that such mandates *may* not be permissible in the future, depending on how the pandemic progresses, pointing out that "[w]e are no longer at the same stage of the COVID-19 pandemic" as we were just 10 months ago.

In other words, what this court and others may approve today may be shot down in the future - which is unusual in the legal world, in which case law precedent ordinarily carries significant weight regarding what is and is not permissible. Given the unprecedented and constantly changing nature of the pandemic, however, it is unwise to rely too heavily on rulings like these in making vaccine mandates or other pandemic-related decisions. Colleges and universities will want to review their policies (if not continually) before the start of each semester (when new transfer students will arrive) and before next year.

How Colleges and Universities Make Their Decisions Matters

Colleges and universities will also want to carefully consider and reconsider their policies because, as this ruling makes clear, how and why a college or university decides to impose a vaccination mandate makes a big difference. The district court detailed the impressive panel of experts Indiana University used to reach its decision to require vaccines and how much time the panel spent analyzing relevant data and literature. As the court observed:

This wasn't (and still isn't) a decision taken lightly. It wasn't a decision reached overnight. It wasn't a decision taken by some fly-by-night committee undetached from the current science, the current progress of the fight against the pandemic, or experience and training in relevant fields of study.

In other words, the process by which a college or university decides to require vaccines (if that is the college or university's decision) may be as important as the decision itself.

Colleges and Universities Should Take Note of How the Court Framed the Issue

There are many other takeaways from the decision, but one additional point of note is how the district court framed the issue of Indiana University's vaccine requirements. It rejected the argument that the university is "forcing the students to undergo injections." Instead, the court explained that the university is "presenting the students with a difficult choice - get the vaccine or else apply for an exemption or deferral, transfer to a different school, or forego school for the semester or altogether." The court recognized that this is a "hard choice," but it is a choice nevertheless. It is important to remember that even when colleges and universities require vaccines, students have choices, and those choices may include options not listed above, such as attending school online.

The First of Many

There is little doubt that this ruling involving Indiana University will be the first of many involving mandatory COVID-19 vaccine requirements on college campuses in the coming months. If the decisions involving COVID-19 issues to date are any indication, courts will address vaccine requirements in a variety of ways and will reach varying conclusions. Nevertheless, this ruling includes important takeaways that colleges and universities will want to take note of, especially as they gear up for a return to campus this fall.

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