

**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



June 2021

Texas Judge Becomes One of the First to Affirm Mandatory COVID-19 Vaccination Policy

On June 12, 2021, a Texas federal judge issued one of the first rulings on a challenge to a mandatory vaccination policy. U.S. District Judge Lynn Hughes of the Southern District of Texas **dismissed a lawsuit brought by 116 employees** of Houston Methodist Hospital who refused to get vaccinated against COVID-19 following a mandate by the hospital. The policy provided employees with a deadline to receive any of the three available COVID-19 vaccinations. Once the deadline had passed, the hospital suspended the refusing employees for 14 days without pay for failure to meet the deadline.

Those plaintiffs who were either fired or in imminent danger of being fired filed suit in late May, alleging violations of Texas's wrongful termination statute. On June 4, 2021, they sought a temporary restraining order, aiming to block the hospital from enforcing the vaccination policy and firing additional employees. Judge Hughes denied the request, stating "the public's interest in having a hospital capable of caring for patients during a pandemic far outweighs the vaccination preferences of 116 employees."

Following a motion to dismiss filed by Houston Methodist, the parties were given the chance to make their case before Judge Hughes at a hearing on June 11, 2021. The plaintiffs argued that the hospital's position to fire an employee for failing to get the vaccination amounted to coercion, or at the very least, undue influence. Additionally, the plaintiffs argued that the vaccination had not received FDA approval, only emergency authorization, and thus it was a violation of federal law to require the plaintiffs to receive an unauthorized drug. Lastly, the plaintiffs argued the policy violated public policy and the Nuremberg

Code, as it required the plaintiffs to act as “test subjects,” since the vaccines had only received FDA emergency authorization.

The hospital rebutted the plaintiffs’ claim for wrongful termination, contending the plaintiffs were not asked to commit any illegal acts, as required by the wrongful termination claim asserted. Additionally, the hospital cited to the recently released [U.S. Equal Employment Opportunity Commission guidance](#), stating that employers can legally impose mandatory vaccination policies as long as they accommodate requests for exemptions due to sincerely held religious beliefs or medical reasons.

Ultimately, Judge Hughes sided with the hospital, rejecting the employees’ wrongful termination and coercion claims. First, when reviewing the wrongful termination claim, Judge Hughes noted that plaintiffs’ characterizations of the COVID-19 vaccines as experimental or dangerous were irrelevant. The order focused on the Texas wrongful termination law, which only protects employees from being terminated for refusing to commit an act carrying criminal penalties to the worker. Thus, without any assertions of an illegal act, the plaintiffs’ wrongful termination claim failed.

Secondly, when considering the coercion argument, Judge Hughes held that requiring an employee to receive a vaccination did not amount to coercion, stating, “Methodist is trying to do their business of saving lives without giving them the COVID-19 virus . . . [the plaintiffs] can freely choose to accept or refuse a COVID-19 vaccine; however, if [they] refuse, [they] will simply need to work somewhere else.” Judge Hughes likened the refusal to acquire a vaccination to the refusal of an assignment, office change, or earlier start time—all for which an employee may be properly fired. Simply, vaccination policies—like other directives—are part of the bargain an employee enters into when choosing their place of employment.

Houston Methodist is not the only employer to face legal pushback due to a mandatory vaccination program. On Feb. 28, 2021, corrections officers in New Mexico [filed suit against Doña Ana County](#) in the U.S. District Court of New Mexico following the institution of a policy requiring all designated first responders to receive the COVID-19 vaccination or face adverse consequences. U.S. District Judge Martha Vazquez refused to grant a temporary restraining order. The defendant’s motion to dismiss is pending. Similarly, on March 17, 2021, in Los Angeles, seven teachers and school district workers sued the L.A. Unified School District in the U.S. District Court for the Central District of California over its mandatory vaccination policy. The claims against the school district have since been dismissed; however, claims against the superintendent and the district’s human resources director are set for trial in June 2022.

It remains to be seen if this case will be appealed and, if so, upheld, as well as if it will be followed by other courts. But, it does support the view that employers can insist on vaccination for return to work. Still, when drafting these policies, companies should maintain compliance with the requisite guidance from not only the [EEOC](#) and [CDC](#), but also that from applicable state and other jurisdictions, and assure that their approach and policy permit the possibility for reasonable accommodations and apply equally to all employees to avoid any substantive pushback. For, as companies look to institute mandatory vaccination policies, legal challenges to what they do may arise.

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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