

Court Denies Request to Enjoin Oregon Vaccination Requirements for Healthcare, School, Other Workers

By Sarah J. Ryan

November 3, 2021

Meet the Authors



Sarah J. Ryan

Principal

(503) 345-4162

Sarah.Ryan@jacksonlewis.com

Related Services

COVID-19

Disability, Leave and Health Management

The plaintiffs were not likely to succeed in showing their individual interests in remaining unvaccinated outweighed Oregon's interest in public health and welfare to slow the spread of COVID-19, U.S. District Court Judge Michael Simon concluded in denying a request for a temporary restraining order (TRO) to block orders to vaccinate as a condition of employment. *Johnson et al. v. Brown et al.*, No. 3:21-cv-1494-SI (D. Or. Oct. 18, 2021).

Background

On October 12, 2021, 42 plaintiffs, who are healthcare providers and staff, teachers, school staff and volunteers, and a state agency worker, sued to enjoin Oregon's requirements that they be vaccinated as a condition of their employment. The plaintiffs filed a motion for a TRO.

In seeking a TRO, the plaintiffs were required to show that:

1. They were likely to succeed on the merits;
2. They were likely to suffer irreparable harm;
3. The balance of equities tipped in their favor; and
4. The TRO is in the public interest.

At issue were Governor Kate Brown's order that executive branch employees be fully vaccinated, unless excepted based on medical or religious reasons, and the Oregon Health Authority's temporary orders requiring full vaccination of teachers and others in schools and healthcare providers, unless they had provided documentation of a medical or religious exception. All of the challenged vaccine orders allow medical and religious accommodations.

Arguments Rejected

Judge Simon rejected the plaintiffs' argument that the vaccine requirement constituted a coerced medical experiment in violation of the Nuremberg Code. The court pointed out that the plaintiffs were free to choose whether to get the vaccine and rejected the plaintiffs' attempt to analogize their situation to that of concentration camp victims who were involuntarily subjected to medical experiments.

The court also rejected the plaintiffs' argument that their preference not to receive a Food and Drug Administration-authorized vaccine was a fundamental right under the Due Process Clause. The court concluded that the vaccine orders are rationally related to the state's interest in slowing the spread of COVID-19, protecting children, teachers, and patients, and preserving healthcare resources. The court also rejected the plaintiffs' arguments under the Fourteenth Amendment. Finally, Judge Simon ruled that the state requirements did not unlawfully conflict with federal informed consent directives.

After Judge Simon issued his order, the Equal Employment Opportunity Commission (EEOC) issued on October 25, 2021, [updated guidance regarding religious accommodations](#). Employers who are receiving requests for religious accommodations for vaccine requirements should be sure to consult with counsel or review the new EEOC guidance closely. The guidance addresses determining the sincerity of religious beliefs, the availability of alternative accommodations, whether the burden of providing an accommodation constitutes an undue hardship, the difficulty of accommodating multiple employees requesting accommodations, and employers' rights to choose which effective accommodation to offer and to reevaluate accommodations due to changed circumstances.

If you have questions or need assistance, please reach out to a Jackson Lewis attorney.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.