

BUSINESS

Minnesota employers confront 'hurry up and wait' on vaccine mandates

Firms consider next steps as federal courts block Biden's requirements.

By Christopher Snowbeck (<https://www.startribune.com/christopher-snowbeck/6370570/>) Star Tribune

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Minnesota employers facing a year-end sprint to comply with federal mandates for COVID-19 vaccines have been granted a reprieve — at least for now.

Federal courts in recent weeks upheld challenges to a trio of Biden administration mandates that, taken together, were poised to mandate a wide swath of employers institute vaccination rules on its workers in January.

While some employers are moving forward with vaccine requirements, others have put plans on hold, particularly those that were considering providing a testing option for unvaccinated workers, said Sara Sidwell, an employment law attorney with Maslon LLP in Minneapolis.

"I would say the majority of covered employers have hit pause," Sidwell said.

Back in September, President Joe Biden announced vaccine mandates for three groups: health care providers, federal contractors, and employers with 100 or more workers.

The health care and federal contractor requirements mandate COVID-19 vaccinations for all workers except those granted religious or medical exemptions. Some small long-term care providers in greater Minnesota have expressed relief about the delay due to staffing concerns, but large hospital operators that began mandating vaccines before the federal requirements say they've lost very few workers as a result.

The third mandate, which culminated in [emergency temporary standards](https://www.startribune.com/emergency-temporary-standards) (<https://www.startribune.com/minnesota-employers-scramble-in-response-to-federal-vaccine-rules/600113112/>) issued in November by the Occupational Safety and Health Administration, differed in giving employers the option to let unvaccinated workers stay on the job if they underwent routine COVID-19 testing.

A federal judge on Tuesday [stayed the mandate](https://www.startribune.com/explainer-must-employers-follow-bidens-vaccine-mandates/600123161/) (<https://www.startribune.com/explainer-must-employers-follow-bidens-vaccine-mandates/600123161/>) on federal contractors, a move that followed similar court actions to temporarily block the requirements on health care workers and those created by the OSHA standards. On Wednesday, Maplewood-based 3M told workers that the manufacturer was putting on standby its plans to require vaccination.



AARON LAVINSKY, STAR TRIBUNE

North Memorial Health Hospital facilitated a COVID-19 vaccination clinic on March 9 at the site of the former Target in Brooklyn Center.

"The federal contractor mandate no longer currently applies," 3M said in the message to workers. "This could change with a new court ruling, but for now, we will stop all company activities to implement the federal contractor mandate."

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The company added: "We continue to strongly encourage vaccination. It is the most effective way to reduce the risk of COVID."

Large Minnesota employers ranging from Medtronic to Target say they'll be in a position to implement the COVID-19 rules if they go into effect.

The federal mandates were set to kick in next month. Many employers are delaying implementation, attorneys say, because they are currently enjoined and legal appeals are likely to stretch well into the new year.

"Even if the court reverses the decision, we will get a new compliance deadline," said Jessica Roe, an employment attorney in Minneapolis.

Health care providers describe different levels of impact on staffing from the vaccine mandate.

For some long-term care providers, the mandate delay provides them more time to develop contingent staffing plans, particularly over the holidays, while getting closer to the time when help becomes available from Minnesota National Guard response teams, said Nicole Mattson, a vice president with Care Providers of Minnesota, a trade group.

Long-term care providers are facing a deepening crisis with staffing, particularly in greater Minnesota, Mattson said. The industry can't quantify how many workers are resigning due to vaccine mandates or other reasons, she said in an e-mail. "Anecdotally, we continue to hear about burnout, stress, fatigue and low pay playing a huge factor," she wrote.

Across three nursing homes and a home care hospice service run by Partners Senior Living Options in central Minnesota, the prospect of a vaccine mandate prompted five or six employees to quit out of a total workforce of 160 to 180 people, said Paula Rocheleau, chief executive of the Royalton-based long-term care provider. The mandate's delay meant that two or three workers have come back for the time being, Rocheleau said.

The company hustled this fall to create a process for reviewing exemption requests. That's been important, Rocheleau said, since the vaccination rate in one building is just 43%.

"It's really hard in these small communities to change attitudes," she said. "The other thing is, we were getting few, few applicants to begin with. Now it's gone to almost nothing since the mandate's been hovering."

But many large health care groups such as Allina Health and Mayo Clinic are moving forward with their mandates. At Allina, 99.8% of workers either were vaccinated or received a medical or religious exemption from the health system's mandate. Out of

27,000 workers overall, Allina says it has parted ways with 53 people.

As for Mayo, Dr. James Watson testified before a state Senate committee last week: "Our patients with complex medical needs deserve and expect that we will provide the safest health care environment that we can. We believe that that requires moving to a full vaccination requirement for our staff."

Until the matter is settled in the courts, many employers are continuing to collect information about the vaccination status of their workers, which will be important should OSHA's emergency temporary standards go into effect, Sidwell said. This also helps employers make decisions as they consider bringing remote workers back into the workplace.

"A lot of employers are continuing to think about reopening their workplaces in the first or second quarter, if they haven't already," Sidwell said. "Understanding your employees' vaccination status and the percentage of your workforce that is vaccinated continues to be an important planning tool as employers consider what their return-to-work plans look like."

Of the three mandates, the broadest in terms of the number of employers affected is the vaccinate-or-test requirement at firms with 100 or more workers, said Susan Ellingstad, a partner with Lockridge Grindal Nauen PLLP.

Many of those employers may appreciate time to weigh options on how to offer tests, since "that is probably one of the toughest logistical challenges to figure out," Ellingstad said.

Even if the federal mandates ultimately fall, or remain delayed indefinitely, employers still must plan how to proceed with worksite safety efforts, said Wade Symons, an employee benefits attorney with Mercer, a New York-based consulting firm.

Roughly one-third of respondents to a Mercer survey said they have implemented vaccine requirements for those returning to work, and reported at least some turnover — less than 5% for most.

But not requiring vaccinations can have a cost as well, Symons said in a statement, since "about a third of respondents that do not require vaccinations say that some employees have refused to return to their worksites specifically due to safety concerns."

The federal vaccine mandates continue to be controversial, and not just in courtrooms. Last week, state Sen. Jim Abeler, R-Anoka, convened the latest in a series of health committee meetings on workforce issues, with Abeler asking whether staffing problems in hospitals and nursing homes stem from the mandates.

"That was a big cliff that everybody was worried about and then suddenly it was on hold," Abeler said at one point. "You go from the big crisis to now uncertainty. So how is that working?"

The Minnesota Hospital Association says anecdotal feedback from hospitals suggests vaccine mandates have had relatively minimal impact on long-standing health care workforce issues. At South Dakota-based Sanford Health, the vaccine mandate policy hasn't yet forced staff departures, but the ultimate impact should be "minimal," said Mike Death, executive director of Good Samaritan Society, the health system's long-term care division.

Less than 1% of employees at Sanford, which operates hospitals and clinics across the Dakotas and greater Minnesota, have been suspended for not starting their vaccine series by Nov. 1, or had not received an approved exemption.

"People have left," Death said during last week's committee meeting. "But I don't think it's a significant number."

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