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Many CT businesses breathe ‘sigh of relief’ after federal vaccine mandate is withdrawn

By Skyler Frazer

Following the Biden administration’s withdrawal last month of a COVID-19 vaccine and testing mandate, many larger Connecticut employers are relieved they won’t have to comply, especially amid a tight labor market that has seen a record number of workers quit their jobs in recent months, employment lawyers said.

“Employers have been struggling with this,” said Glenn Dowd, a partner in Hartford law firm Day Pitney’s labor and employment practice. “It’s very unpopular with a segment of the workforce, and the workforce is really important right now.”

Dowd and others said that when vaccines were first made available, employers had two schools of thought: implement a mandate, or play it by ear based on workers’ receptiveness to the shots.

Now, with the U.S. Supreme Court striking down vaccine and testing rules, Dowd said he expects companies with existing mandates to keep them, at least for now, and businesses without requirements to not put them in place.

Of the 625 Connecticut employers polled last fall by accounting firm Marcum and the Connecticut Business & Industry Association, 37% said they opposed government vaccine mandates.

“In our mind it’s better left to us,” Connecticut Construction Industries Association President Donald Shubert said of vaccination rules. “It’s just normal for us to adjust to job-specific requirements.”

Mandate withdrawal

On Jan. 25, the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) announced it was withdrawing the COVID-19 vaccination and testing standards issued in November.

The emergency mandate required businesses with 100 or more employees to have their workers get vaccinated, or mask up and submit to weekly testing.

The withdrawal came after the U.S. Supreme Court voted to block the federal mandate. At the same time, the court upheld Biden’s vaccination requirement for healthcare workers like doctors, nurses and others who work in certain medical facilities.

“That’s one interesting aspect of the ruling,” said Patricia Reilly, a partner at law firm Murtha Cullina. “The broad ruling applicable to all employers with 100 or more employees was blocked, but the separate rule with a more limited mandate that requires healthcare workers at facilities receiving federal money like Medicare or Medicaid, that’s upheld.”

Reilly said she heard a big “sigh of relief,” from many of her large employer clients following the Supreme Court decision, but she also represents healthcare providers that must comply with the vaccine mandate, which has created some industry strain.

“There are severe labor shortages in health care right now, so there’s a lot of tension around this,” Reilly said. “The labor shortage does not supersede the requirement that you have to be vaccinated.”

Even before the federal mandate, Dowd said employers were considering their own worker safety rules and protocols. Dowd and Reilly said that some businesses went ahead and implemented their own vaccine or test protocols, unless employees applied for medical or religious exemptions.

“That was probably 75% of employers that looked at that,” Dowd said.

For example, Pomfret aerospace and medical manufacturer Loos & Co. issued a vaccine mandate last summer, and said in November that 100% of its workforce was fully inoculated. Loos & Co. said, as a result of its mandate, that it lost about eight people out of around 270 employees who chose not to get vaccinated and left the business.

Middletown-based Liberty Bank also instituted a vaccine mandate last fall, just as it was requiring many of its workers to return to the office.

Other companies didn’t take a hard-line stance on the issue, Dowd said. Some surveyed employees to find out if they were or planned to be vaccinated, and if the percentage of vaccinated workers was high enough companies didn’t feel they needed a mandate.

“We’re in a time period where finding employees is difficult,” Dowd said. “Workers are at a premium now, and there are some workers where this is a hard-line issue for them. They simply will not work for a place that has a vaccine mandate based on their feelings about a mandate or vaccines generally.”

Shubert's organization has about 300 members and represents several different commercial construction trade associations in the state. Companies in the organization do large-scale commercial and government projects and were facing workforce issues even before the pandemic.

"The vaccine mandates would have put a lot of pressure on our workforce," Shubert said. "I don't know the percentages of our construction tradespeople who are vaccinated versus not vaccinated, but I think that it's high enough that the mandate would have put pressure on us."

A "one-size-fits-all" rule didn't make sense, he added, and caused confusion in the industry.

"We've worked safely through all stages of the pandemic – we never stopped," Shubert said.

"We have a safety culture, so adopting things like social distancing, masking and things like that are natural for us."

Although OSHA withdrew the mandate as an "enforceable emergency temporary standard," the agency kept the vaccine and testing protocol as a recommendation to businesses.

Moving forward

Abby Warren, a partner at law firm Robinson+Cole who specializes in employment law, said she's telling her clients to continue identifying ways to keep workers safe, through masking, vaccination or testing guidelines.

"Employees want to be safe and come to work and feel protocols are being followed," Warren said.

She's also telling clients to be flexible and monitor changes from the government.

Shipman & Goodwin Partner Daniel Schwartz said remote work has been so common since March 2020, that some white-collar employers mandated vaccines as a way to get their employees back in the office. The thinking is, vaccinated workers will feel more comfortable being around other vaccinated workers.

Still, remote work gave some companies the ability to have more flexible policies: vaccinate if you plan to come into the office, or work from home if not.

That's been the strategy adopted by some large Hartford area corporations like health insurer Cigna Corp. While the majority of the Bloomfield-based company's employees are still working remotely, it requires anyone coming into the office to be vaccinated.

“[Companies are] being understandably cautious proceeding from here,” Schwartz said. “No one's dealt with this type of issue in our lifetime really, so I think everyone has been learning as we go along.”