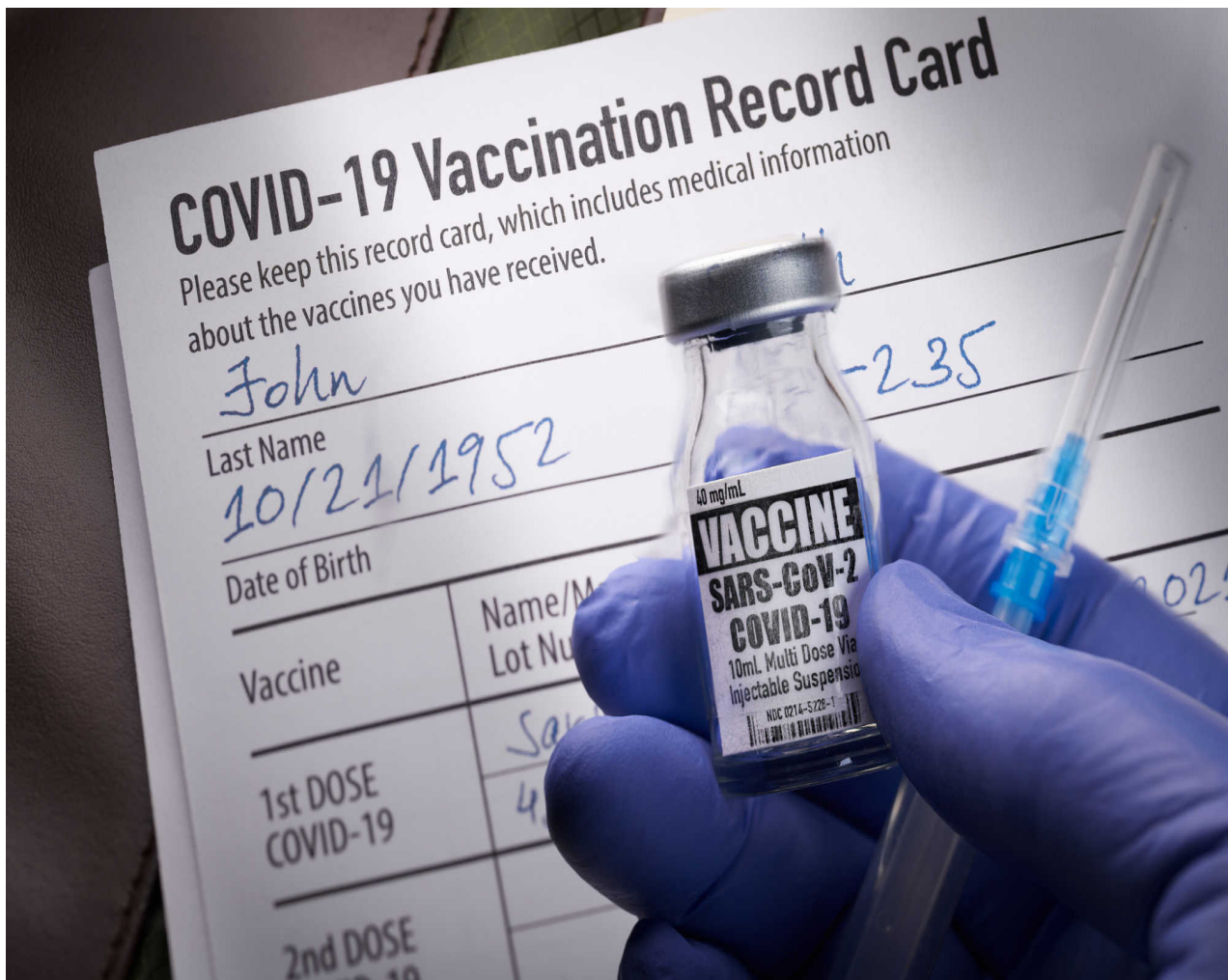


The Virgin Islands Consortium

Appeals Court Extends Block on Biden Mandate Forcing Employers With 100 or More Workers to Require Vaccination or Weekly Testing

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A federal appeals court on Friday extended a block on a Biden administration mandate demanding that large companies employing 100 or more people require those workers to be vaccinated or test weekly for Covid-19 beginning January 4. The three-judge panel ruled that such a mandate "grossly exceeds" the authority of the Occupational Safety and Health Administration (OSHA), through which the mandate was given.

The judges in the U.S. Court of Appeals for the Fifth Circuit in New Orleans, maintained that challengers of the mandate were likely to succeed in their claim that the mandate

was an unlawful overreach, and therefore blocked the government from proceeding. The court on Nov. 7 had temporarily blocked the government from moving forward, and provided the Justice Department with enough time to respond.

Challengers of the mandate are mounting several different legal arguments against the requirements, including the argument that OSHA is improperly exercising powers that can be invoked only by Congress.

Judge Kurt D. Engelhardt wrote as part of the ruling that the mandate had led to undue strife, and that it usurps Americans' constitutional rights. "From economic uncertainty to workplace strife, the mere specter of the mandate has contributed to untold economic upheaval in recent months," he wrote. "Of course, the principles at stake when it comes to the mandate are not reducible to dollars and cents. The public interest is also served by maintaining our constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions — even, or perhaps particularly, when those decisions frustrate government officials."

Judge Engelhardt was joined by Judges Edith H. Jones and Kyle Duncan in the ruling. They are all Republican appointees.

The Justice Department continues to contend that OSHA was within its authority to execute the mandate through powers provided to it by Congress. The U.S. D.O.J. also argued in its filing that blocking the mandate "would likely cost dozens or even hundreds of lives per day, in addition to large numbers of hospitalizations, other serious health effects and tremendous costs."

It added, "That is a confluence of harms of the highest order."

On Friday, the Justice Department said it would continue its fight to see the mandate — expected to eventually reach the Supreme Court — be implemented. "Today's decision is just the beginning of the process for review of this important OSHA standard," Justice Department spokesperson Dena Iverson said in a statement. "The department will continue to vigorously defend the standard and looks forward to obtaining a definitive resolution following consolidation of all of the pending cases for further review."

If the mandate were to stand, large employers by Virgin Islands standards such as Home Depot, Plaza Extra East, the Market St. Croix and St. Thomas would have to require that their employees are either vaccinated or must test on a weekly basis by January 4.

The new requirements, issued by OSHA on Nov. 4, covers roughly 84 million workers across the U.S. and its territories. Companies subject to the requirements must ascertain that employees who are not vaccinated are tested weekly. Employers are not required to provide or pay for the tests, although there may be exceptions based on varying collective bargaining agreements.

Companies that do not adhere to the new policy could face penalties of up to \$13,600 per violation. Typically, OSHA responds when it receives a complaint, but in regards to the new mandate, it will check for compliance through planned inspections, according to senior Biden administration officials speaking to the Wall Street Journal.

The mandate does not apply to employees who work exclusively outdoors, from home, or where other individuals are not present, the Biden administration said.

"While I would have much preferred that requirements not become necessary, too many people remain unvaccinated for us to get out of this pandemic for good," Mr. Biden has said, adding that vaccination mandates are "nothing new."

[Late September](#), Governor Albert Bryan said he was prepared to enforce portions of Mr. Biden's mandate. During its weekly Covid-19 press briefing, the administration showed a slide presentation that read, "Governor Bryan is prepared to enforce the federal mandates passed down by President Biden as they apply here in the territory, and continue to urge Virgin Islanders to take advantage of the availability of vaccines."

According to federal officials, employers subject to the new rules must require each vaccinated worker to provide proof of vaccination status. Acceptable documents include a record of immunization from a provider or pharmacy; a copy of a CDC Covid-19 vaccination card (seen in feature image); medical records; immunization records from public health, state or tribal immunization information system; or a copy of other official documentation that contains the type and dates of vaccination, according to WSJ.

A signed and dated statement from the employee attesting to his or her vaccination status is permitted when documentation can't be obtained.

The Biden administration has separately required vaccinations for federal employees and federal contractors by the Jan. 4 deadline. Additionally, more than 17 million workers in health facilities that receive Medicare and Medicaid reimbursement must get vaccinated under the new federal requirement. The USVI's two hospitals fall under the latter category.

Delegate to Congress Stacey Plaskett lauded the Biden decision in a statement issued in September. "Since President Biden took office, he has pulled every lever to save lives and stop the spread of the virus. Since January 20, our nation has gone from 2 million fully vaccinated Americans to more than 175 million. And since early July, we have seen a consistent trend of increasing vaccinations with an average of 825,000 shots a day. Throughout the pandemic, the Biden administration has worked around the clock to get more people vaccinated, decrease hospitalizations and deaths, and keep our schools and economy open," Ms. Plaskett said.

She added, "... President Biden outlined a robust plan to build on our progress, stop the spread of the Delta variant, and increase vaccinations. The wartime spirit and science-based plan reflects the Biden administration's whole-of-government approach and unwavering commitment to defeat the deadly virus at home and abroad."