

## Publications

### Mandatory COVID-19 Vaccine for University Students Survives Federal Court Challenge

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In May 2021, Indiana University announced that in order to attend on-campus classes and activities, students must be fully vaccinated against COVID-19. The mandate, applicable only for the fall 2021 semester, was formulated by a campus restart committee that monitored the pandemic, CDC and state health guidance, and vaccine effectiveness data. The mandate grants exemptions for religious, medical, and ethical reasons, or for students whose courses are strictly online. Students who qualify for an exemption, however, must continue to wear a mask in public, socially distance, undergo mitigation testing, and quarantine if exposed. Students who do not get vaccinated and do not qualify for an exemption are not allowed on campus and have their access cards, email, and university accounts deactivated.

A group of eight students sued the public university in *Klaassen v. Trustees of Indiana University*, requesting that the court enjoin the university's mandate from taking effect. The students argued that the university was depriving them of "liberty" without due process of law in violation of the Fourteenth Amendment, specifically, the liberty to refuse the COVID-19 vaccine. The students further argued that requiring them to receive an "unsafe," experimental vaccine infringes on bodily autonomy, violates medical privacy, and is coercive. Even if exempted, the students claimed that additional requirements of masking, testing, and distancing are irrational because herd immunity has been realized and the pandemic is in its waning phase. The students further contended that different requirements for unvaccinated students violates their free exercise of religion, will result in social judgment among their peers, and will lead to bullying and discrimination.

On July 18, 2021, the district court issued a lengthy opinion, refusing to enjoin the university. On August 2, 2021, the U.S. Court of Appeals for the Seventh Circuit affirmed the decision. First, as to the state of the COVID-19 pandemic, the court noted that expert data contradicted much of the students' arguments, virus variants are actively spreading, and although improving, the pandemic is certainly not over. Second, as to vaccine safety and effectiveness, the court reasoned that although

COVID-19 vaccines are still under emergency use authorization (EUA), the FDA required more stringent standards and data testing than the normal EUA process, as manufacturers were required to show by “clear and compelling evidence” that the vaccines were safe. Similarly, although serious side effects from the vaccine have been reported, the extremely low risk of complications and high efficacy of vaccines suggest they are safe. Third, the court found no evidence in the record that the policy discriminates against the students for their religious beliefs, as it is neutral and generally applicable to all students. Finally, the court noted that additional requirements for unvaccinated students are not irrational but rather in alignment with CDC guidance. Even vaccinated individuals can still get infected, asymptomatic carriers can spread the virus, and instead of nasal swabs, the mandate requires a less intrusive saliva testing.

The court acknowledged that the mandatory vaccine policy presents the students with a difficult decision. A hard choice, however, does not amount to unconstitutional coercion or irreparable harm. Most persuasive to the court was that students have options: get the vaccine; apply for an exemption or deferral; transfer to a different school; forego school for the fall semester; or take online courses. Ultimately, the available data on vaccine effectiveness, the state of the pandemic, the many options presented to students, and a carefully-crafted policy persuaded the court that the vaccine mandate is a rational course of conduct to further a legitimate interest in preserving the health of a university campus.

Notably, *Klaassen* is only a procedural ruling. The decision emphasizes that the record is limited, the case moved rapidly, and experts are still debating much of the science in the record. Although the decision denies the students’ challenge, *Klaassen* cautions that as more medical science and evidence becomes available, courts should expect State policies that more carefully account for constitutional rights. The court underscored that point: as the pandemic changes, so should university policy.

## IMPACT ON PRIVATE INSTITUTIONS

Public and private universities are not held to the same legal standards. Public universities are subject to the Fourteenth Amendment, whereas private institutions are not. Public universities in states like Texas and Ohio are also subject to recent state laws, which prevent public schools from mandating their students receive the COVID-19 vaccine, whereas private institutions are not.

For private universities that choose to mandate vaccination, however, *Klaassen* provides helpful guidance for best practices: utilize a committee of appropriate campus employees to monitor state and federal pandemic guidance; craft a well-informed, data-driven policy; garner endorsement from student, faculty, and staff groups; continually adapt based on the status of both the pandemic and vaccine effectiveness; provide for exemptions; keep medical information confidential; and reassess the policy on a semester-by-semester basis. Private universities should also structure COVID-19 vaccine mandates as to not breach private contractual agreements (such as with student admissions, scholarships, meal plans, or housing), nor violate applicable federal anti-discrimination statutes. Determining what is rational or reasonable for a university to pursue depends greatly on the unknown future development of the COVID-19 pandemic. As the pandemic changes, so should university policy.

Please contact your Vorys attorney or a member of the Vorys higher education team with specific questions or for assistance with review or implementation of vaccination policies.