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Fifth Circuit Orders Lower Court to Reconsider Denial of Injunction Involving United Airlines' Vaccine Mandate

On February 17, 2022, the U.S. Court of Appeals for the Fifth Circuit [reversed](#) a lower court's decision to deny a preliminary injunction that would have blocked enforcement of United Airlines' mandatory vaccine policy. Plaintiffs are United Airlines employees who requested medical or religious exemptions from United Airlines' policy mandating COVID-19 vaccination. United Airlines granted the accommodation of unpaid leave for employees who qualified for an exemption. The district court denied the plaintiffs' request to block the airline from placing them on unpaid leave while the district court considered the case, holding the plaintiffs had failed to show a substantial likelihood of imminent, irreparable harm.

A split panel of the Fifth Circuit reversed the district court's decision, with the majority finding United Airlines' policy "actively coerced" employees to violate their religious convictions. According to the majority, the plaintiffs were presented "with two options: violate their religious convictions or lose all pay and benefits indefinitely. That is an impossible choice for plaintiffs who want to remain faithful but must put food on the table."

The majority decision, however, addresses only a narrow issue, i.e., whether the plaintiffs had demonstrated irreparable harm. The decision does not address whether United Airlines is able to impose a vaccine requirement, or whether United Airlines is allowed to place non-compliant employees on unpaid leave. In terms of precedential value, the panel was also clear that its unpublished decision was strictly limited to the parties, facts and legal test before it.

In a 57-page dissent, Judge Jerry E. Smith states that the majority wanted to "play CEO of a multinational corporation," and that "[n]othing, especially not the law, will thwart this majority's plans." United Airlines continues to defend its vaccination policy, arguing it has saved countless lives, and "the best way to stay safe is for everyone to get vaccinated."

If you have any questions about the Fifth Circuit's recent ruling, or how it might impact your organization's management of COVID-19, please contact your Kutak Rock attorney or a member of the firm's [National Employment Law Group](#). You may also visit us at www.KutakRock.com.

