



Fifth Circuit Rules Against United Airlines Accommodation for Vaccine Mandate

On February 17, 2022, a split Fifth Circuit panel ruled that United Airlines could not accommodate employees, who received religious exemptions from its COVID-19 vaccine mandate, by merely placing them on indefinite unpaid leave. According to United, about 2,000 of its employees have been granted religious or medical accommodations with respect to its vaccine mandate. Any employee who directly interacts with customers, like flight crews, that had received a vaccine exemption was placed on indefinite unpaid leave but got preferential consideration if they applied for job openings that were not customer-facing.

The divided Fifth Circuit panel held that the accommodation offered was insufficient. Had United offered an accommodation that let the employee go back to work with masks, social distancing, and weekly COVID-19 testing, the panel likely would have ruled in favor of such an accommodation.

It is important to note that the Fifth Circuit's decision is extremely narrow and did nothing to strike down United's mandatory vaccination policy. Employers with mandatory vaccination policies should, however, consider this ruling when deciding how to accommodate employees who receive religious or medical exemptions. Texas employers should also keep in mind that Governor Abbott's October 11, 2021, Executive Order purported to create two additional exemptions to mandatory vaccination policies:

- 1) for employees who objected to receiving the vaccine as a matter of personal conscious; and
- 2) for employees who were previously infected with COVID-19.

It should be noted, however, that the Governor's mandate can only be enforced by local district attorneys seeking criminal fines. At present, there have been no reported enforcement attempts. Therefore, it does not appear that the Governor's Executive Order is, at present, a significant threat to employer vaccine mandates.

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