

Federal judge rejects last-ditch effort to block Oregon COVID vaccine mandate

BY JULIA SHUMWAY
Of Oregon Capital Chronicle

A federal judge on Monday struck down a last-minute attempt to block Oregon's vaccination mandate for teachers, health care workers and state employees, while another heard arguments in a similar case.

Most people working in health care or education and executive branch employees had until the end of the day Monday to prove they've been fully vaccinated. Unless they're represented by unions that successfully bargained for a delayed deadline or received medical or religious exemptions, any employees who haven't been fully vaccinated will have to take time off or even lose their jobs.

State employees and others have been turning to courts in a last-minute effort to escape Gov. Kate Brown's mandate.

Monday's federal ruling is the latest blow to vaccine opponents after state courts rejected four separate attempts to block a mandate Gov. Brown issued in August. Several additional lawsuits over the mandate are pending.

In the first case, U.S. District Judge Michael Simon in Portland flatly turned down a temporary restraining order requested last week by 42 Oregonians, including teachers, nurses, business owners, a school volunteer and a state employee. All are subject to the mandate. Two have already been vaccinated and 13 received exemptions on medical or religious grounds.

Simon cited an 1877 U.S. Supreme Court ruling on compulsory smallpox vaccinations, in which the court wrote that liberty guaranteed by the Constitution "does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."

At least one of the plaintiffs, a nurse, testified that she was fired for failing to get a vaccine. Others said they would lose their jobs or be fined \$500 per day as business owners who fail to require all their employees to receive vaccinations.

"The vaccine orders present plaintiffs with a difficult choice, but it is nevertheless a choice," Simon wrote. "Plaintiffs may either get the vaccine, apply for an exception, or look for employment elsewhere."

He added that the federal court couldn't rule on whether Brown and the Oregon Health Authority violated a state law, because the Eleventh Amendment to the U.S. Constitution prevents federal courts from telling state officials how to comply with a state law.

Meanwhile, U.S. District Judge Ann Aiken on Monday afternoon heard arguments from an attorney for the Freedom Foundation, a right-wing think tank based in Washington, and seven more Oregonians who are subject to the mandate. Aiken said she planned to issue a ruling after the hearing, but it was not available by Monday evening.

The plaintiffs in that case all tested positive for COVID within the past year and argue that they have natural immunity to reinfection that makes a vaccine medically unnecessary.

The federal Centers for Disease Control (CDC) still recommends COVID vaccinations for people who have already had COVID citing a Kentucky study that found unvaccinated people were more than twice as likely to be reinfected with COVID than those who had already been sick and vaccinated.

Three of the plaintiffs were approved for medical exemptions, though with restrictions that may still leave them unable to do their jobs, Freedom Foundation attorney Rebekah Millard said in court. Another was denied an



MCFD1 paramedic Victor Hoffer (right) administers a dose of the COVID-19 vaccine to a Mt. Angel firefighter. FILE PHOTO, Keizertimes

exemption, and two chose not to file religious or medical exemption requests because they had no "good faith reason" to apply, she said.

"Because the right to bodily autonomy is basically eviscerated by the vaccine mandates, the plaintiffs are in the position of choosing between bodily autonomy or their lawful employment," Millard said.

The state's attorney, Christina Beatty-Walters of the Oregon Department of Justice, pointed to the four lawsuits in Oregon state courts where judges

rejected requests to block the vaccine mandate from taking effect. Over the past two weeks, district judges in Jefferson and Marion counties, the state appeals court and the state appellate commissioner have ruled against plaintiffs making similar arguments.

"Vaccines, your honor, are the best public health tool we have to protect the public," Beatty-Walters told Aiken. "We're going on two years in this pandemic, and the governor and (Oregon Health Authority) have taken action to hasten its conclusion."

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