



7th Circuit upholds Indiana University Vaccine Mandate

By: Margo Ely, Executive Director at IRMA

On August 2, the 7th Circuit upheld the vaccination mandate issued by Indiana University, stating, “vaccination requirements, like other public-health measures, have been common in this nation.” The Court relied on a 1905 United States Supreme Court opinion that held states may require all members of the public to be vaccinated against smallpox. [IRMA issued an opinion last December that vaccines can be legally mandated.](#) In analyzing the University’s mandate, the Court emphasized the importance of exceptions for religious beliefs and persons for whom vaccination is medically contraindicated. The University provided for these exceptions, requiring those persons who qualify for one of these 2 exceptions must wear masks and be tested twice a week. “These plaintiffs just need to wear masks and be tested, requirements that are not constitutionally problematic.” The Court also discussed University mandates, acknowledging that many universities do not require the vaccination: “Plaintiffs have ample educational opportunities” to attend elsewhere if they so choose. “Each university may decide what is necessary to keep other students safe in a congregate setting. Health exams and vaccinations against other diseases ... are common requirements of higher education.” The Court also addressed Plaintiffs’ First Amendment argument and referenced other conditions of enrollment that are normal and proper. “The First Amendment means that a state cannot tell anyone what to read or write, but a state university may demand that students read things they prefer not to read and write things they prefer not to write.” In conclusion, the Court stated, “Few people want to return to remote education – and we do not think that the Constitution forces the distance-learning approach on a university that believes vaccination (or masks and frequent testing of the unvaccinated) will make in-person operations safe enough.”

The Plaintiffs are appealing this case to the United States Supreme Court. At this time, this opinion is the law of the 7th circuit, which encompasses all IRMA communities. The opinion is straight forward and paves the way for additional mandates. IRMA continues to monitor the issue of vaccination mandates and will issue a recommendation at an appropriate time, which could be when the FDA issues full approval/authorization of the vaccines. In the meantime, while the law supports vaccine mandates with the 2 exceptions, consideration of the appropriate timing of a mandate is important. Traditionally, health care systems and schools have been the leaders of vaccination mandates. We are seeing some mandates from both industries. We have not yet seen a legal challenge to an employer mandate. We believe a public employer mandate will involve additional due process considerations. We will continue to keep the membership apprised of issues surrounding COVID vaccine mandates.