

Court Rejects Challenge to West Virginia Private Employer's Mandatory COVID-19 Vaccine Policies

By Marla N. Presley & Laura C. Bunting

November 12, 2021

Meet the Authors



Marla N. Presley

(She/Her)

Principal

412-338-5148

Marla.Presley@jacksonlewis.com



Laura C. Bunting

Principal

412-338-5147

Laura.Bunting@jacksonlewis.com

Related Services

COVID-19

Disability, Leave and Health
Management

A private employer's mandatory COVID-19 vaccine policy does not violate public policy under West Virginia's common law retaliatory discharge doctrine, a federal judge has held, rejecting an employee's claim against the employer. *McCutcheon v. Enlivant ES, LLC*, No. 5:21-cv-00393, 2021 U.S. Dist. LEXIS 216671 (S.D. W. Va. Nov. 9, 2021).

Background

The plaintiff, Stephanie McCutcheon, worked at an assisted-living facility. Her employer gave her until June 1, 2021, to get the COVID-19 vaccine or be terminated. The company terminated her after she refused.

McCutcheon sued the company under common law retaliatory discharge principles, claiming that her termination violated public policy. The company asked the district court to dismiss the case because no public policy protected McCutcheon from termination after refusing directives.

Court Rejects Claim

The court agreed with the company, holding that a viable claim for retaliatory discharge requires the existence of a clear public policy expressed in laws and regulations.

The court also relied on West Virginia's historic encouragement of vaccinations, such as mandating inoculations for students. It noted that public efforts encouraging COVID-19 vaccinations align with the "century-old Supreme Court mandate legalizing state-imposed mandatory vaccination for contagious disease."

The court also rejected McCutcheon's argument that a public policy could be found in federal law. It held that the regulation addressing approval of vaccine use did not affect the rights and responsibilities of private employers, and thus expressed no public policy relating to them.

Finally, the court rejected McCutcheon's argument that portions of the Nuremberg Code outlawing inhumane and deadly medical experiments on humans created a public policy against mandating a federally approved COVID-19 vaccine.

Employers should always seek legal advice concerning COVID-19 policies. If you have any questions or concerns about your workplace policies, please reach out to the Jackson Lewis attorneys with whom you regularly work.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.