



Lawsuits Coming for Entities That Don't Change COVID Mandates After CDC Update: Lawyer

Description

USA: Entities with COVID-19 vaccine mandates that don't pay heed to the new Centers for Disease Control and Prevention (CDC) guidance will face lawsuits, a civil liberties lawyer says.

"We don't have a new lawsuit in the works yet. But if we see that colleges and universities and public employers are not responding to the new CDC guidance the way that they should be, then we would certainly tee up a new lawsuit," Mark Chenoweth, president and general counsel at the New Civil Liberties Alliance, told The Epoch Times.

The response to the updated guidance should be, at a minimum, a lifting of mandates for people who have recovered from COVID-19, he added.

Such people have a high level of protection against severe illness and death, according to a number of studies. Many studies indicate the protection is higher than that of the COVID-19 vaccines—including one study funded by the CDC.

The CDC issued updated guidance on Aug. 11, stating in part that risk for illness from COVID-19 "is considerably reduced by immunity derived from vaccination, previous infection, or both" and that "persons who have had COVID-19 but are not vaccinated have some degree of protection against severe illness from their previous infection."

The public health agency rolled back quarantine recommendations for people, regardless of vaccination status, citing the high amount of immunity in the U.S. population from vaccination, prior infection, or both.

Since virtually all entities that have imposed mandates have cited CDC guidance, the entities won't be able to argue they aren't aware of the updated guidance, according to Chenoweth.

That means any institution that doesn't alter or rescind its mandate in light of the update "is ripe for a lawsuit," he said.

“Because the thing that the judges have said so far is that it was rational for these employers to follow CDC guidance, but now the CDC guidance is different. And if they’re now going forward with these mandates for example, against people who have [natural immunity](#) in the teeth of the CDC guidance on that question, then I think it’s going to be much harder for them to win even a rational basis challenge to their policies.”

Suits

The New Civil Liberties Alliance has brought lawsuits against Michigan State University (MSU), the U.S. government, Fairfax County Public Schools, George Mason University, and Rhode Island officials over mandates that the legal group says are illegal.

They have focused on how entities aren’t granting exemptions to people with proof that they’ve recovered from COVID-19.

While one of the cases won the plaintiff an exemption from the mandate, judges have ruled against many others, often tracing the mandates to CDC guidance.

“Plaintiffs have the burden of negating every rational basis that supports the MSU vaccine mandate, and the Court finds that they have failed to do so,” U.S. District Judge Paul Maloney, a George W. Bush appointee, wrote in February as he dismissed the suit.

“CDC guidance is clear: ‘[V]accination remains the safest and primary strategy to prevent SARS-CoV2 infections,’” he added. “In achieving MSU’s stated legitimate goal of protecting its students and staff from COVID-19, it was plainly rational, in July 2021 when MSU established the policy, for MSU to rely on CDC guidance and require its students and staff to receive the COVID vaccination.”

The CDC has long maintained that vaccination is superior to natural immunity, and urged people with natural immunity to get vaccinated, even though many studies show that natural immunity provides better protection than vaccination and [some suggest](#) that people who recovered from COVID-19 are at higher risk of side effects if they do get a vaccine.

Moreover, some experts say getting vaccinated after recovery doesn’t make sense because the increase in protection is negligible, though others say the increase is worth the risk.

Could Have Changed in 2021

Chenoweth said the CDC should have updated its guidance in 2021.

“I think it’s remarkable that it’s taken the CDC this long to come around to admitting the science on this topic. The science was there at least a year ago when we started litigating the issue of whether or not folks with natural immunity should be subjected to vaccine mandates,” he said.

A CDC spokeswoman told The Epoch Times in an email that the update was based on having more tools such as treatments than were available in 2020 and “the reality that nearly the entire U.S. adult population now has some level of immunity, either due to vaccination, past infection, or both.”

“We also have a better understanding of who is at higher risk for getting very sick with COVID-19 and ways we can help protect them from severe disease. With more tools to protect ourselves and our communities from severe illness from COVID-19—like vaccination, boosters, and treatments—we have increased protection and flexibility for the future. CDC’s commitment to addressing COVID-19 is strong and as a nation, we continue to respond to evolving challenges and identify best practices related to COVID-19,” she added.

The spokesperson didn’t respond when asked why the guidance wasn’t updated in 2021.

Chenoweth said courts would be made aware of the new guidance, including the appeals court weighing the appeal in the MSU case. In another case, for Dr. Stephen Skoly Jr., a surgeon in Rhode Island, the update will be incorporated into an amended complaint.

by Zachary Stieber

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