

The Forbidden COVID-19 Chronicles February 8 2021 Good News and Bad News About Mask and Vaccine Mandates

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A major source of stress during the COVID-19 debacle has been the sweeping loss of constitutional rights in countries like the U.S. Americans are used to having the right to make their own decisions about almost everything, ranging from when to open and close their businesses to which medical interventions to choose. For the record, the loss of individual rights is not new – our rights have been gradually eroded during the last several years. What is new is the degree of government intrusion into our lives and the speed with which our rights have disappeared. At this time, we no longer live in a free country. One of the reasons we are working with groups that have filed lawsuits and will continue to file more of them is that the last working branch of our government is the court system. The courts are our only hope for restoring our rights and our freedoms at this time.

While this debacle continues, it seems that the two biggest sources of angst are mandates concerning masks and vaccines. I receive several hundred emails per week asking if the government can make people wear masks, and if governments and employers can force someone get one of the COVID-19 vaccines.

Let's start with some bad news - masks. There are no laws mandating that people must wear masks. However, criminals do not follow laws – they make up their own rules. Some state and local governments have been taken over by criminals who have mandated that masks be worn in public places. And the criminals in charge of the Centers for Disease Control have mandated that masks must be worn when using any form of public transportation. Is this legal? No. But again, criminals do not follow the law. If you want to ride the bus, use the subway system in your city or fly on a plane, you will need to wear a mask.

What about exemptions? Most of the unconstitutional mask mandates include exemptions based on age or health. But these are routinely ignored. Some criminal entities claim to recognize exemptions if documented by a physician. There are two problems. The first is that state medical boards have been weaponized to discourage doctors from thinking on their own or acting in the best interest of their patients. Actions like issuing a mask exemption or prescribing an inexpensive therapeutic for COVID-19 can result in an investigation and even the threat of licensure revocation. One doctor in Minnesota is currently being investigated by the medical board for reviewing evidence concerning the risks and benefits of vaccines with patients. Consequently, it is difficult to get an exemption from a doctor.¹

When engaging in day-to-day activities like grocery shopping or getting a haircut most people can find places in which masks are not required. But if your employer demands

that you wear a mask, or you plan to fly to another location, you will have to wear a mask – for now. Eventually, once we are finished suing the states and the feds and we prove that there was no reason for an emergency declaration and that our rulers have committed fraud, we will start suing the airlines, and the big box stores, and employers and so on. These lawsuits will be much more likely to succeed after we have proven through the courts that there was no pandemic and that these entities instituted their unconstitutional and arbitrary rules in response to seasonal flu.

I have good and bad news about the potential for employer mandates for COVID vaccines.

First, the bad news. Some healthcare institutions are requiring a COVID vaccine. Many, if not most of them have required flu vaccines in previous years. At this time, according to the CDC, 24 states require that healthcare workers in long-term care facilities receive a flu vaccine,² and 32 states required that patients in these facilities get a flu vaccine. While some employees have managed to get exemptions approved in the past, this may be much more difficult due to the hysteria generated by the declaration of the fake pandemic emergency.

There is better news – at least for now – for non-healthcare workers. The two vaccines currently available in the U.S. were approved under Emergency Use Authorization and are considered investigational. They are not fully licensed. Both states and private businesses cannot mandate that anyone receive a product that is not fully licensed by the FDA.

According to 21 U.S. Code § 360bbb–3 - Authorization for medical products for use in emergencies, people must be informed of the following:

- (I) that the Secretary [of Health and Human Services] has authorized the emergency use of the product;
- (II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and
- (III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.³

According to the FDA, federal law prevails:

“FDA believes that the terms and conditions of an EUA issued under section 564 preempt state or local law, both legislative requirements and common-law duties, that impose different or additional requirements on the medical product for which the EUA was issued in the context of the emergency declared under section 564 ... In an emergency, it is critical that the conditions that are part of the EUA or an order or waiver issued pursuant to section 564A — those that FDA has determined to be necessary or appropriate to protect the public health—be strictly followed, and that no additional conditions be imposed.”⁴

The executive secretary of the Advisory Committee on Immunization Practices (ACIP), a committee of the Centers for Disease Control, confirmed this during a meeting in August 2020:

"I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandated."⁵

This does not mean that some employers won't try to mandate COVID vaccines for their employees. But they will face several problems. An interesting legal precedent is *Doe#1 v Rumsfeld*, in which the court ruled that a vaccine approved under an EUA could not be mandated even for military personnel.⁶

Employee backlash and the potential for losing qualified long-term employees who may be difficult to replace may be an issue. Some employees might sue and file for temporary injunction, which could result in lengthy and expensive litigation.

Liability is another issue. We've been advising employers for years about the potential liability associated with offering incentives to employees such as discounts on health insurance co-pays in return for agreeing to medical intervention. For example, a woman agrees to have a mammogram in order to save \$50 per month on her co-pay for employer-sponsored insurance. She is diagnosed with ductal carcinoma in situ as a result of the mammogram. DCIS is not cancer; but her uninformed doctor advises her to have surgery and radiation. If she later finds out that she was over-diagnosed and overtreated, she might sue her employer for coercing her to have a mammogram. A firm mandate – for example a COVID-19 vaccine - as a condition of employment may increase the potential liability even more. It is almost inevitable that trial lawyers will be willing and ready to take these cases and sue for damages if employees are injured by COVID-19 vaccines. Employers can lose even if they ultimately win due to the cost of litigation, and presentation of the Vaccine Adverse Events Reporting System (VAERS) data concerning COVID vaccines to an employer considering mandates may be all that is required to change his/her mind.

Last but not least, more and more lawsuits alleging that there was and is no pandemic/emergency are being filed. Some of these cases have already succeeded in other countries (detailed analysis of these cases will be provided in a future newsletter). If there is no pandemic and there is no emergency, then there is no justification for an emergency use authorization, and the government would have to rescind the EUAs. Then the COVID-19 vaccines would be subjected to more normal licensing procedures. It is almost certain that the vaccines would be approved – almost 96% of submissions to FDA from drug companies are approved. But without the constant false COVID hysteria, it would be difficult to force thinking people to get these vaccines.

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https://www.youtube.com/watch?v=Z5JSmSubwEw&feature=share&fbclid=IwAR2ZykO8JaXAbKrOq5Ui7Tje0p1kvwK5MzIkjiAGo1rPSLVH_EqkQ7T3FWY

² <https://www.cdc.gov/phlp/publications/topic/menus/lcinfuenza/index.html>

³ <https://www.law.cornell.edu/uscode/text/21/360bbb-3>

⁴ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities>

⁵ https://www.cdc.gov/vaccines/videos/low-res/acipaug2020/COVID-19Supply-NextSteps_3_LowRes.mp4

⁶ <https://www.clearinghouse.net/detail.php?id=11861>