

美國勞工強制接種 COVID-19疫苗案(一)

Mandatory Covid-19 Vaccination for U.S. Labors: Case I

編輯部 編譯

案號：

[21a244] National Federation of Independent Business, et al., v. Department of Labor, Occupational Safety and Health Administration, et al.

[21A247] Ohio, et al., v. Department of Labor, Occupational Safety and Health Administration, et al.



摘要

2021年11月，美國職業安全與衛生管理局發布一項針對全國大部分勞動力之命令。僱傭超過100人之雇主必須執行系爭命令，將有約8400萬名勞工受此規範。勞工必須接種COVID-19疫苗，或每週自費篩檢陰性且工作時配戴口罩；系爭命令也優先於各州法律。州政府、雇主與非營利組織對系爭命令提出質疑，第五巡迴上訴法院率先中止系爭命令；嗣後第六巡迴法院併案處理，卻撤銷第五巡迴上訴法院之判決，認為系爭

關鍵詞：COVID-19、疫苗(vaccine)、強制接種(mandatory vaccination)、職業安全(occupational safety)、職權(authority)

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命令並未超過職業安全與衛生管理局之職權。聲請人向最高法院請求緊急救濟，本院認為職業安全與衛生法僅授權職業安全與衛生管理局專責職業危害與勞工安全健康，而不包含廣泛的公衛措施；COVID-19的感染風險並非每一職業均會面臨且程度不同，職業安全與衛生管理局未見於此而一概要求所有勞工接種疫苗，在沒有國會的明確授權下是超出其職權。因此，最高法院中止系爭命令之適用。

In November 2021, the Occupational Safety and Health Administration (OSHA) issued an order targeting the majority of the workforce in the State. Employers with more than 100 employees must enforce the issued order and approximately 84 million workers will be subject to this regulation: Workers must be vaccinated with the COVID-19 vaccine or be screened negative weekly at their own expense and wear a mask at work. The issued order overrides the states laws as well. States, employers and nonprofits challenged the tethering order. The Fifth Circuit Court of Appeals was the first to stay the order; the Sixth Circuit later consolidated and reversed the Fifth Circuit's decision, holding that the order did not exceed the authority of the OSHA. The claimant sought emergency relief from the Supreme Court. The Court held that the Occupational Safety and Health Act only authorizes OSHA to specialize in occupational hazards and worker safety and health, and does not encompass a wide range of public health measures; the risk of COVID-19 infection is not unique to every occupation and varies in magnitude, and OSHA exceeded its authority by requiring all workers to be vaccinated without explicit congressional authorization. Accordingly, the Supreme Court stayed the application of the order at issue.

壹、事實概要

一、事件概要

1970年美國國會通過「職業安全與衛生法」(the Occupational Safety and Health Act)，於勞工部下設立職業安全與衛生管理局(Occupational Safety and Health Administration, OSHA)，由部長監督之；其任務乃確保職業安全，即「安全且衛生的工作條件」，並執行由部長發布之「職業安全與衛生準則」(Occupational Safety and Health Standards)。該準則必須是「為提供就業安全或衛生而合理、必要或適當」，且須經嚴格的程序為訂定，包含通知、評論與公開聽證之機會。職業安全與衛生法也規定「緊急暫行準則」(emergency temporary standards)，刊登在聯邦公報上後即可生效，而無須經嚴格程序。然而勞工部長必須證明：(一)勞工因接觸有毒或有害身體或來自新危害(new hazards)之物質或製劑(agents)，而面臨嚴重危險(grave danger)；(二)為保護勞工受此危險，緊急準則是有必要的。

2021年9月9日，拜登總統公布一項新計畫，要求更多的美國人接種疫苗；其中，勞工部訂定緊急規則(emergency rule)，要求擁有100名以上勞工的僱主，應確保其勞工完全接種疫苗，或每週至少一次篩檢陰性。該規則之目的在於提高全美企業的疫苗接種率；並預計與其他草案共同施行，要求約1億名美國人接種疫苗。

2個月後，勞工部發布該緊急準則，並規定「全時遠程工作」或「完全戶外工作」的勞工能豁免(exemptions)接種疫苗之要求；然而，這種豁免實際上相當狹義且縹緲，據統計只有9%的園藝師或場地管理員(groundskeepers)能夠豁免。何況這項準則並未根據行業或接觸COVID-19之風險進行分類，致使大多數的救生員(lifeguards)與巡線工(linemen)，與