

Appeals Court Revives Montana Law Barring Vaccine Status Discrimination

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Zachary Stieber

Health News

'This is great news for Montanans. No one should be subject to discrimination because of their vaccination status,' a state official told The Epoch Times.



A person receives a COVID-19 vaccine, in a file photograph. John Fredricks/The Epoch Times



By Zachary Stieber, Senior Reporter

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A U.S. appeals court on Oct. 9 removed the injunction blocking a Montana law that prohibits discrimination based on vaccination status.

Montana House Bill 702, enacted in 2021, states that it is illegal for a person or government entity to deny a person services based on their vaccination status. It also bars employers from requiring vaccination as a condition of employment.

U.S. District Judge Donald Molloy in 2022 said the law as applied to health care employees and employers was preempted by two federal laws, the Americans with Disabilities Act (ADA) and the Occupational Safety and Health Act (OSH Act), and violated the U.S. Constitution's 14th Amendment. The judge entered an injunction blocking the statute.

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A panel of the U.S. Court of Appeals for the Ninth Circuit disagreed on all three points on Oct. 9 as it ordered the injunction removed.

The lower court held that the ADA requires employers to know the vaccination status of workers and to discriminate against unvaccinated workers, but the appeals court stated that has not been established. The findings "show at most only 'the existence of a hypothetical or potential conflict' between the ADA and HB 702, that is, a perceived conflict that is too speculative on these facts to justify preemption," U.S. Circuit Judge Daniel A. Bress wrote.

The panel pointed to a Fifth Circuit ruling from 2021 that found that the ADA did not preempt a Texas law prohibiting mask mandates in schools after disabled plaintiffs said a lack of a mask mandate would deny them a quality education. The Fifth Circuit stated in that ruling that "plaintiffs are not entitled to their preferred accommodation, but only a reasonable accommodation."

There are similar problems with the position that the OSH Act preempts the Montana law, according to the Ninth Circuit panel.

Under the law's general duty clause, employers must "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." The

district court stated that vaccine-preventable diseases are recognized hazards.

“At a minimum, we conclude that the district court’s OSH Act preemption analysis is infirm for substantially the same reason as the court’s ADA holding: the district court’s findings at most support a ‘hypothetical or potential conflict’ between the OSH Act and HB 702, which is ‘insufficient,’” Bress said.

He noted that neither plaintiffs, which include a hospital system, nor the district judge could identify any cases that showed the act’s clause preempts state law.

The law also does not violate the U.S. and Montana Constitutions because Montana officials have a rational reason for outlining different standards for different classes of health care facilities, the unanimous panel ruled. The law contains one set of rules for nursing homes, another for hospitals, and a third for other health care facilities.

“This is great news for Montanans. No one should be subject to discrimination because of their vaccination status,” Chase Scheuer, press secretary for Montana Attorney General Austin Knudsen, told The Epoch Times in an email.

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A lawyer representing the plaintiffs did not respond to a request for comment.