

Federal Judge Grants Temporary Restraining Order Blocking Enforcement of Iowa Code 280.31

Background:

Iowa Code Section 280.31, signed into law on May 20, 2021, prohibits public school districts from requiring masks or face coverings for employees, students, or visitors. As you are likely aware, a federal lawsuit challenging Iowa Code 280.31 was recently filed on behalf of a local disability rights organization and the parents of eleven students with disabilities enrolled in public schools across the state. Among other things, the lawsuit claims that Iowa Code 280.31 violates the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 by preventing schools from implementing “universal” mask requirements in school buildings to protect students with disabilities who may be especially at risk from COVID-19.

On September 13, a federal judge in Des Moines granted a temporary restraining order (“TRO”) prohibiting the State from enforcing section 280.31 during the pendency of the lawsuit. The order, which can be read in full here <https://www.documentcloud.org/documents/21061751-federal-temporary-restraining-order-iowa-house-file-847>, is effective immediately. Practically speaking, each local school board may now make the decision whether to require masks in school buildings as part of their COVID mitigation plan.

Governor Reynolds has indicated that the State plans to appeal the ruling. However, until and unless a contrary order is entered, the TRO will remain in effect.

Ahlers & Cooney, P.C., will continue to provide updates as they become available. They know each District will have unique considerations with respect to this development; they encourage districts to contact their counsel with specific questions.

COVID Cases on the Rise among Youth

In the last two weeks four BK students have tested positive for COVID-19, one at the elementary and three in the high school.

The virus is significantly different than last year at this time. Youth are much more susceptible to this Delta Variant. Statewide, nearly half of all people testing positive are under the age of 30. The single largest age group testing positive in Iowa are those youth age 17 or younger with nearly one-third of all cases. In Cerro Gordo County recently, youth made up 38 percent of all positive tests.

State-wide positivity rates are surging. Last week, 18,196 Iowegians tested positive. We have not seen the infection rate this high since January 20, 2021.

Staff are asked to be careful under the circumstances of this new, more transmissible strain. Again, both staff and students are encouraged to wear face coverings. Teachers and paras are asked to stress hand washing and cleanliness with their students.

President Makes Vaccine Mandate

On September 9, 2021, President Joe Biden announced new COVID-19 vaccination requirements for employers with more than 100 employees, health care facilities that accept Medicare and Medicaid funding, executive branch employees, and federal contractors.

That would cover an estimated four million federal employees and workers on government contracts.

In addition, the Labor Department's Occupational Safety and Health Administration (OSHA) will issue a rule using emergency authority in the coming weeks to require employers with more than 100 employees to ensure their workers get vaccinated or get tested weekly. That would have an impact on some 80 million private sector workers.

OSHA said the new Emergency Temporary Standard will also "apply to public sector state and local government workers, including educators and school staff, in the 26 states and two territories with a state OSHA plan."

Likely to Apply to Public Schools

The National Council of School Attorneys advises that the OSHA rule to be developed will likely apply to schools in Iowa of 100 or more employees because Iowa does have a state OSHA plan. Below is what we received.

According to the U.S. Department of Labor, OSHA is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated, or required unvaccinated workers to produce negative test results on a weekly basis. The rule also required covered employers to provide paid time off for employees to get vaccinated and to recover if they are under the weather post-vaccine. OSHA will issue an Emergency Temporary Standard (ETS) to implement this. The ETS will apply to public sector state and local government workers, including educators and school staff, in the 26 states and two territories with a state OSHA plan.

Attorneys are advising not to do anything until the rules are released. It may be 30-60 days before we see anything.