

Mini Kapoor Talks With Bloomberg About Competing Vaccine Mandates for Texas Companies

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Haynes Boone Associate [Mini Kapoor](#) talked with *Bloomberg* about how Texas companies face competing COVID-19 vaccine mandates from Gov. Greg Abbott and President Joe Biden.

Below is an excerpt:

Texas businesses face risk and uncertainty as the state and federal government spar over Covid-19 vaccine mandates for employees. Governor Greg Abbott signed an executive order Oct. 11 outlawing such requirements in the second-largest U.S. state. That immediately set up a clash with President Joe Biden, who issued an executive order Sept. 9 calling for employers with more than 100 workers to require Covid vaccines or weekly testing once the federal workplace health and safety regulator creates formal rules. Caught in the middle are companies trying to protect workers and customers from a virus that's killed more than 700,000 Americans since January 2020.

What About the President's Order?

Biden's order carries more weight, period. While governors have a lot of power in their states, an executive order issued by a president preempts one issued by a governor on the same topic, says Mini Kapoor, a Houston lawyer with Haynes Boone. Biden's executive order directed the Occupational Safety and Health Administration to create rules implementing his mandate. When those rules come out, companies employing more than 100 people will need to follow Biden's lead.

"Those employers would be required to follow the federal mandate and not the Texas mandate at that point," Kapoor said. "It's a confusing situation because the federal OSHA standards are still being issued, but the governor's order is in place right now."

So is This Just a Matter of Sequencing?

Not necessarily. Abbott's order and the president's will probably see each other in court. While employment law experts say the supremacy of federal OSHA regulations over a governor's executive order is a given, there's nothing stopping the state from seeing how a judge might rule. Abbott could attempt to bring novel arguments to the court, expanding on his position that employees and customers should be allowed to cite religious, moral or medical objections to the federal mandate. That argument might come up short, however, since the federal mandate already allows individuals to submit to weekly testing instead of getting the inoculation. Abbott's order is likely to be put on hold during such a lawsuit, according to Kapoor. That's because a judge is likely to find that vaccine mandates benefit public health, while an executive order against them creates potentially costly policy U-turns for larger businesses, she said.

To read the full *Bloomberg* article, click [here](#) (subscription required) or in the [Washington Post](#).