

Practice Update

# Federal Judge Strikes Down CDC's Eviction Moratorium

May 5, 2021

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A federal judge for the District of Columbia issued a decision on May 5 striking down the Centers for Disease Control and Prevention's (CDC) nationwide eviction moratorium. The order was issued in a lawsuit brought by a coalition of property owners and realtors late last year, *Alabama Association of Realtors, et al. v. United States Department Of Health And Human Services, et al.*, U.S. District Court, District of Columbia No. 1:20-cv-03377-DLF.

The CDC moratorium, now voided nationwide, went into effect on September 4, 2020 and, earlier this year, the CDC extended its expiration date to June 30, 2021. The CDC moratorium declared "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person." To qualify for protection under the moratorium, a tenant was required to submit a declaration to their landlord affirming, among other things, they (1) expect to earn less than \$99,000 in annual income and (2) are "unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses."

As noted by the district court—unlike the Coronavirus Aid, Relief, and Economic Security Act

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(CARES Act), which applied only to certain federally backed rental properties—the CDC moratorium applied to all residential properties nationwide. Violators of the moratorium faced potential criminal penalties, including a fine of up to \$250,000, one year in jail, or both, and a maximum fine of \$500,000 for organizations.

The district court concluded the Public Health Service Act, 42 U.S.C. § 264(a), does not grant the CDC the legal authority to impose a nationwide eviction moratorium. The court explained that the first clause of section 264(a) grants the CDC, with approval of the Secretary of the Department of Health and Human Services (HHS), authority to make and enforce regulations to prevent the interstate or international spread of disease. But the court interpreted this authority as being tethered to, and narrowed by, the second clause authorizing the CDC to regulate “sources of dangerous infection to human beings.”

While multiple courts have previously opined on this question (with courts ruling on both sides of the issue), Judge Friedrich is the first judge to reject the federal government’s request to narrow the ruling to apply only to the litigation parties, and made clear her order’s reach would be nationwide.

The same day as the district court’s decision, the CDC filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.

With the CDC announcing it will seek a stay of the ruling pending appeal, landlords should not perceive the ruling as immediately authorizing evictions against tenants who have submitted declarations pursuant to the CDC’s guidelines. Nor does the ruling impact new notice requirements under Fair Debt Collection Practices Act (FDCPA), addressed in our separate alert [here](#).

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