



Supreme Court Blocks Mandate, Upholds for Health Care Workers

Foster Swift Labor & Employment Law News E-blast

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Today, the U.S. Supreme Court blocked the Occupational Safety and Health Administration's (OSHA) "vaccine-or-test" mandate for large companies of 100 or more employees that would require them to either get vaccinated against COVID or require them to wear masks and get tested weekly. In a 6-3 decision, the Court ruled to block the "vaccine-or-test" mandate, stating in its written opinion that:

"Although COVID-19 is a risk that occurs in many workplaces, it is not an occupational hazard in most. OSHA's indiscriminate approach fails to account for this crucial distinction — between occupational risk and risk more generally — and accordingly the mandate takes on the character of a general public health measure, rather than an 'occupational safety or health standard'."

See the Court's full ruling here: [21A240 Biden v. Missouri \(01/13/2022\)](#) (supremecourt.gov).

However, in a mixed ruling of 5-4, the Court granted a separate rule request from the Biden administration and the Centers for Medicare & Medicaid Services (CMS) to take effect to allow its vaccine mandate to continue for health care workers. This includes workers in nursing homes, hospitals and other facilities that are Medicare and Medicaid certified.

So what now?

As for health care workers, with the health care mandate now in effect, health care workers will be required to receive a first Covid-19 vaccine dose by Thursday, January 27, 2022 and be fully compliant with the policy by Monday, February 28, 2022. Failure to comply could result in penalty fines, denial of payment for new admissions and even termination of participation in the CMS programs.

For your reference, here are links to resources you may find useful:

- [Current emergencies \(CMS.gov\)](#)
- [OSHA ETS FAQs](#)

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The case is being remanded back to the lower courts for further consideration. As this situation has shown, laws concerning employers can change quickly. If you have any concerns in the meantime, please feel free to reach out to a member of our labor & employment law team:

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