

Effective January 13, 2022

SCOTUS BLOCKS THE OSHA VACCINE OR TEST MANDATE, WHILE PERMITTING THE HEALTHCARE WORKER TO GO INTO EFFECT

Background

On Thursday, January 13, 2022, the U.S. Supreme Court ruled 6-3 to block the OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) declaring that OSHA had exceeded its authority. The mandate followed the December 17, 2021, decision of the Sixth Circuit Court of Appeals overruling of a circuit court which stayed the ETS that required employees of companies with one hundred or more employees to be vaccinated against COVID-19 or undergo weekly COVID-19 testing.

Details

On January 13, 2022, the Court held that OSHA had exceeded its authority. "Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly," the United States Supreme Court's conservative majority stated in an unsigned opinion. "Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category."

Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan, the court's three liberals, dissented. The opinion, written by Breyer, stated the majority "seriously misapplies the applicable legal standards. And in so doing, it stymies the Federal Government's ability to counter the unparalleled threat that COVID-19 poses to our Nation's workers."

In contrast, in a 5 to 4 vote, the Court upheld a regulation issued by the Centers for Medicare and Medicaid Services that mandates vaccines for almost all employees at hospitals, nursing homes and other health care providers that receive federal funds. The court held that, unlike the OSHA regulation, the vaccine mandate for health care workers was justified as similar to the detailed regulations that the Centers for Medicare and Medicaid Services has long imposed as a condition for health care providers receiving federal funds. The Court found the regulation serves to protect patients from being exposed to greater risks when they are in hospitals, nursing homes, rehabilitation facilities, ambulatory surgical care centers and other such medical providers. Thus, "the rule thus fits neatly within the language of the statute. After all, ensuring that providers take steps to avoid transmitting a dangerous virus to their patients is consistent with the fundamental principle of the medical profession: first, do no harm," the court stated in a separate the unsigned opinion. "It would be the very opposite ... for a facility that is supposed to make people well to make them sick with COVID-19," the majority said, noting that in many facilities without a vaccine mandate, "35 per cent or more of staff remain unvaccinated."

Summary

As of Thursday night, 22 states have imposed COVID-19 vaccination mandates for health care workers while 6 states ban mandates, according to the National Academy for State Health Policy.

The ETS and its implementation is a complex and evolving process. The attorneys at Litchfield Cavo can provide counsel, answer questions and assist with your compliance needs.

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