

NEWS & INSIGHTS

U.S. Supreme Court pauses OSHA vaccine or testing mandate and upholds CMS vaccination rule for healthcare facilities receiving federal funds

[INSIGHTSLEGAL UPDATE](#)

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

On January 13, 2022 the U.S. Supreme Court ordered that Occupational Safety and Health Administration's (OSHA's) vaccine/testing mandate be stayed (paused) and not go into effect. The OSHA vaccine/testing mandate would require all companies with 100 or more employees to either test weekly or vaccinate all employees for COVID. Initially, the U.S. Fifth Circuit Court of Appeals had stayed OSHA's mandate. Then, in December 2021, the U.S. Sixth Circuit Court of Appeals lifted the stay and allowed OSHA to proceed with enforcement, which would have gone into effect in January 2022. With the Supreme Court's ruling, the OSHA vaccine/testing mandate has been stayed by the highest court in the country and is therefore no longer in effect.

Ruling may signal long odds for current OSHA rule

For clarity, the Supreme Court's ruling only pauses the OSHA mandate. The issue at hand is whether the OSHA mandate should be paused while the litigation continues forward to determine the ultimate validity of the rule itself. The Supreme Court decided that the OSHA mandate should be paused during the litigation and has instructed the U.S. Sixth Circuit Court of Appeals to continue with adjudicating the validity of the OSHA mandate. Thus, the OSHA mandate is not fully dead; merely, it is on pause while the Sixth Circuit completes its adjudicatory review of the mandate's validity.

Still, the Supreme Court's ruling is likely to have significant impact on the Sixth Circuit's analysis. The Supreme Court's pausing of the mandate is a signal that the Supreme Court believes that the mandate is invalid. The Supreme Court opined that the challenge to the OSHA mandate was likely to prevail and render the regulation invalid; thus, it was proper to pause the OSHA mandate at this time, before it went into effect. Further, the Supreme Court reasoned OSHA only has the authority to regulate workplace occupational hazards. The Supreme Court explained that COVID is not a workplace hazard; to the contrary, COVID is an everyday, daily danger that is encountered in the community at large and even in one's house. Therefore, COVID is not a workplace hazard, it is a general danger, no different than crime, air pollution or other communicable diseases. [As stated by the Supreme Court](#): "Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA's regulatory authority without clear congressional authorization."

With this ruling, OSHA may attempt to modify the mandate in its process towards final rulemaking that is currently underway. The Supreme Court indicated that under certain specified, narrow circumstances, it may be possible for an OSHA standard to be valid to protect a specific type of workforce that may come into COVID. But for now, the OSHA mandate is indefinitely paused and not in effect.

CMS rule for healthcare facilities receiving Medicare and Medicaid upheld

Separately, the U.S. Supreme Court ruled that the Center for Medicare and Medicaid's interim rule (CMS Rule) requiring vaccinations for healthcare employees was enforceable. This rule covers facilities that receive Medicare and Medicaid for healthcare services, including hospitals, nursing homes and rehabilitation clinics. The Supreme Court ruled that vaccine requirements are reasonable in a medical health setting to protect patients.

Accordingly, for facilities covered by the CMS Rule, they must now take affirmative steps to comply with the vaccine

mandate. Said facilities must have all of their covered staff receive a first dose of the vaccine by January 27, 2022, unless there is an exemption. Likewise, all staff must be vaccinated in full by February 28, 2022. CMS has stated that it will exercise some flexibility in enforcing the mandate to allow compliance within 60 days.

Federal contractor vaccine rule remains on hold

Lastly, a separate Federal Contractor vaccine mandate is still paused via a ruling from a U.S. District Court, affirmed by the Eleventh Circuit, which issued a nationwide stay on the Federal Contractor vaccine mandate.

Complying with COVID regulations and other health, safety and employment rules can be complicated and daunting. Best practice is to consult with your lawyers and advisors for implementing and executing sound policies that prioritize your business needs while complying with rules and regulations. Saxton & Stump's [Labor and Employment](#) team is available to answer legal questions and provide compliance guidance for employers. Additionally, our strategic partner, [Granite HR Consulting](#) can assist with updating policies and managing change communications.

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