



Supreme Court Blocks OSHA Vaccination or Testing Mandate for Large Employers but Allows Health Care Vaccine Mandate to Take Effect

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On January 13, the United States Supreme Court granted the requests of numerous states, trade groups, businesses, and other organizations to stay the Biden Administration's vaccination-or-testing mandate for employers with 100 or more employees that are not already covered by the separate federal contractor and health care mandates. In a separate simultaneous ruling, the Court allowed the health care vaccination mandate issued by the Centers for Medicare & Medicaid Services (CMS), which applies to most hospitals, nursing facilities, and many other health care providers that receive Medicare and Medicaid payments, to go into effect.

The Department of Labor's Occupational Safety and Health Administration's (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) has been the subject of litigation since it was issued on November 4, at which time the Fifth Circuit stayed its implementation. The Sixth Circuit subsequently lifted that stay, which would have allowed OSHA to proceed with enforcing the rule's requirements, some of which took effect this week. The Supreme Court expressed concern that OSHA exceeded its statutory authority to regulate workplace safety by seeking more broadly to regulate public health. In light of the Court's decision, the OSHA vaccine or test mandate is now blocked for the foreseeable future, until the Sixth Circuit disposes of the petitions for review of the ETS filed by the states, businesses, and non-profit organizations and throughout any subsequent review of the Sixth Circuit's eventual decision by the Supreme Court.

In contrast, the Court has given the green light to the CMS health care vaccine mandate – which requires many health care workers to be vaccinated – to take effect, explaining that the mandate is in line with the statutory authority to implement measures to protect the health and safety of Medicare and Medicaid patients, many of whom are at increased risk of serious complications or death from COVID-19. The CMS mandate does provide exemptions for documented medical and religious reasons.

Additional Information

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