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Supreme Court Blocks COVID-19 Vaccine Rule for Businesses

In a 6-3 decision, the US Supreme Court voted to stay the vaccine-or-test regulation, ruling that the Biden administration's vaccine-or-test requirements for large private companies exceeded their authority. Separately, the Court ruled that a more limited vaccine mandate could stand for workers employed by government-funded healthcare facilities.

The administration's vaccine mandate would have required workers (at workplaces with at least 100 employees) to receive a Covid-19 vaccination, or be masked and tested weekly at their own expense.

The Court found that OSHA had greatly exceeded its authority in issuing the mandate, finding the rule was too broad to fall within the purview of the Department of Labor's Occupational Health and Safety Administration to regulate workplace safety. The Court concluded the mandate was "a significant encroachment on the lives - and health - of a vast number of employees", noting: "The Act empowers the Secretary to set workplace safety standards, not broad public health measures."

Ultimately, the Supreme Court granted the applications for stay of OSHA's rule. As a result, the federal Emergency Testing Standard (ETS) is stayed pending disposition of the case now pending before the 6th Circuit. Tellingly, the Supreme Court implicitly acknowledges the possibility that the 6th Circuit may ultimately rule in favor of OSHA, by stating that the stay shall also remain in effect pending disposition of any "writs of certiorari" (i.e., if the National Federation of Independent Businesses challenges the 6th Circuit's adverse ruling in the future, by raising the issue once again with the Supreme Court, the stay would remain in effect throughout that process).

Below are a couple of additional highlights from the Supreme Court's decision:

- The majority opinion refers to the ETS as a "blunt instrument," and criticizes its overbreadth by noting that it largely lumps together workers who have greatly different work environments (e.g., a lifeguard or landscaper compared with a factory worker or butcher). The majority's criticism appears to be largely focused on the fact that the pandemic is not uniquely a workplace concern.
- The majority was also persuaded by the fact that OSHA has never before issued a regulation similar to the ETS. "[I]n its half century of existence, [OSHA] has never before adopted a broad

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public health regulation of this kind—addressing a threat that is untethered, in any causal sense, from the workplace.”

Note: In a separate ruling regarding the administration’s vaccination mandate for health-care workers, a 5-4 majority concluded the rule did not present the same concerns. The majority opinion explained that “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.”

Now that the federal ETS is stayed, employers should immediately re-evaluate their vaccination/testing policies to determine whether revisions are in order. Without the potential pre-emptive effect of the federal ETS, the individual laws and regulations promulgated by the states and municipalities may now be enforceable. In those jurisdictions in which there was an inherent conflict between the ETS and a state law (e.g. Florida), this may unfortunately require employers to now reverse course with their policies.

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