

## Supreme Court Halts OSHA COVID-19 Vaccination Mandate

(1/13/2022)

The Supreme Court has suspended enforcement of OSHA's "Vaccine and Testing Emergency Temporary Standard," which had required that employers with 100 or more employees develop, implement, and enforce mandatory COVID-19 vaccination policies.

OSHA issued the standard in early November. Several business groups and state governments immediately challenged the standard in various courts around the country. Under federal court rules, all of those cases were consolidated for review by one federal appeals court. That court ruled in mid-December that the standard was a permissible exercise of OSHA's authority, and OSHA planned to begin enforcing the standard this month.

The Supreme Court ruled on January 13 that the standard exceeds OSHA's statutory authority. The Court held that OSHA's legal authority extends to setting "workplace safety standards," but not "broad public health measures." The Court concluded that the risk of contracting COVID-19 is not "an occupational safety or health hazard," and that the vaccine mandate, therefore, was an overreach.

Technically the Supreme Court's ruling was an interim decision; the precise question before the Court was whether OSHA should be permitted to enforce the vaccine mandate while the lower courts further consider the substantive legality of the standard. But the basis for the Supreme Court's ruling foreshadows the ultimate conclusion; the Court has essentially told the lower courts how it views the issue: the Court concluded that the challengers "are likely to succeed on the merits of their claim that [OSHA] lacked authority to impose the mandate."

The Supreme Court's ruling does not automatically affect other regulatory vaccine mandates (such as the mandate for federal contractors and subcontractors, or the mandate for medical facilities that receive Medicare or Medicaid funding). Nor does the ruling affect private-sector employers who have implemented their own vaccine mandates, or who may wish to do so. The ruling simply suspends OSHA's legal right to enforce its own vaccine mandate.

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We will continue to monitor developments in relation to COVID-19 issues, including additional vaccine and testing issues. In the meantime, we encourage employers who have specific questions about COVID-19 issues (or any employment law topics) to contact [Don Johnsen](mailto:Don.Johnsen) at (602) 530-8437 or [dpj@gknet.com](mailto:dpj@gknet.com).

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