U.S. Supreme Court Halts Enforcement of OSHA Vaccine Mandate for Private Employers

Client Alert

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What You Need to Know

- The U.S. Supreme Court granted a temporary stay of OSHA's requirement mandating that certain private employers require employees to be fully vaccinated against COVID-19 or be subject to weekly testing.
- The ruling does not mean that employers are unable to mandate vaccination, masking, testing or other safety measures as a condition of employment, only that OSHA's mandates cannot go into effect at this time.
- Employers must still consider potential compliance requirements under other federal, state or municipal laws and regulations, as well as ongoing workplace safety issues and related business policies.

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SCOTUS Decision Overview

On January 13, 2021, the U.S. Supreme Court granted a temporary stay of the Emergency Temporary Standard (ETS) issued last year by the Occupational Safety and Health Administration (OSHA), which would have generally mandated private employers with 100 or more employees to require those employees to be fully vaccinated against COVID-19 or be subject to weekly testing.

It is important to note that the Supreme Court's 6-3 ruling does not mean that an employer, regardless of size, cannot currently require its employees to be vaccinated or subject to testing and masking requirements, as this issue was not before the Court. Rather, the ruling held that the ETS mandate could not currently take effect, as

OSHA may have exceeded its authority by issuing an ETS directed at a broad public health concern, rather than a workplace safety issue. The Supreme Court returned the issue back to the U.S. Court of Appeals for the Sixth Circuit to make this determination. The majority opinion did, however, indicate that the petitioners challenging the ETS are likely to prevail on their argument that OSHA was not authorized to enact the broad provisions of the ETS.

Where Things Stand Today

Last week's Supreme Court ruling does not bring closure to litigation related to vaccination mandates as it only addressed whether the previously issued and broad ETS was enforceable. The ruling also does not mean that OSHA cannot issue further regulations that could be enforceable to stop the spread of COVID-19 in specific work environments.

Litigation related to COVID-19 vaccination requirements will continue for the foreseeable future. Beyond any litigation specifically focused on OSHA's reach, there will be litigation involving actions taken at the state level, as well as private party actions challenging policies adopted and/or enforced by employers in this area.

What Should Employers Do Now?

Employers must continue to stay well-informed on all legal developments related to COVID-19 vaccination and testing requirements including legal challenges to the ETS. By way of example, recent developments include a municipal order that went into effect in Newark, New Jersey on January 10, 2022, requiring proof of vaccination to enter certain establishments in that city. Also, New Jersey Governor Phil Murphy issued Executive Order 271 on October 20, 2021, which generally requires employees of contractors and subcontractors doing business with the state or a state agency or authority to be vaccinated against COVID-19 or be subject to weekly testing requirements.

Employers must also consider the steps they should (and in certain instances must) take immediately to keep their employees safe. Certain actions may still be required under OSHA's General Duty Clause, which requires employers to maintain a workplace that is free of known hazards.

Employers are also cautioned to:

We will continue to monitor all developments at the intersection of employment law, the COVID-19 pandemic, and the compliance obligations of employers, and will keep you informed. Please contact the authors of this Client Alert with questions or to discuss your specific business circumstances.

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