

SCOTUS Halts OSHA Vaccine Requirement, CMS Requirement OKd

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The U.S. Supreme Court on Thursday invalidated the Emergency Temporary Standard issued by OSHA back in November.

The ETS had required all employers with over 100 employees to either implement a mandatory COVID-19 vaccination policy or implement a weekly testing protocol for all unvaccinated employees. The ETS had been stayed temporarily by an appellate court, but the stay had been lifted before the matter made its way to the Supreme Court, and oral argument was held last Friday. In its short decision, the Supreme Court noted that OSHA's powers to implement an ETS are limited to workplace safety standards, not what it characterized as "broad public health measures." The Court then held that this vaccine or testing standard was not sufficiently "tethered to the workplace" to fall within OSHA's statutory authority.

Conversely, in a separate decision also issued on Thursday, the Court lifted a pending stay on the Emergency Standard issued by the Centers for Medicare and Medicaid Services, allowing the standard to move forward. The CMS standard requires participating facilities - including hospitals, nursing homes, and other entities governed by CMS - to impose an employee vaccine mandate to receive reimbursement from Medicare or Medicaid for health care services. The Court held that the scope of the mandate appeared to be within the authority of CMS, which is charged with ensuring that providers caring for Medicare and Medicaid patients protect their patients' health and safety. In addition, the Court noted that vaccine requirements are a regular part of health care employment and that health care workers and public health organizations overwhelmingly support the CMS standard.

The Court's rulings do not affect any business's voluntary decision to impose a vaccine or testing mandate on its workforce.

It appears we have answers to the major regulatory questions regarding vaccines. The existing OSHA mandate is, for all practical intents and purposes, null and void. Any policies issued under that mandate can safely be rescinded.

The CMS mandate stands, and those facilities subject to CMS requirements (as well as those, like clinical higher education programs, whose students or faculty need to work in these facilities) will now need to require vaccine mandates. The mandate must be subject to legal exemptions for employees' medical or religious contraindications to the vaccine, and employers will want to ensure a robust process for evaluating these exception requests.

If you have any questions or concerns, please [reach out to anyone in the Barley Snyder Employment Practice Group](#).

WRITTEN BY:



Kevin A. Moore

Partner

Tel: (610) 370-8110

Email: kmoore@barley.com