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U.S. Supreme Court Blocks OSHA's Vaccine-or-Test Rule; Upholds CMS's Healthcare Vaccine Mandate

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The U.S. Supreme Court, in a 6-3 decision, has blocked the Department of Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS) requiring private employers with 100 employees or more to vaccinate-or-test for COVID-19 from taking effect. However, in a separate decision, the Court allowed a more limited Centers for Medicare and Medicaid Services (CMS) Interim Final Rule, requiring COVID-19 vaccination of staff working at health care facilities that receive Medicare and Medicaid money from the federal government.

The Court's decision on OSHA's ETS does not prohibit employers across the country from implementing their own vaccinate-or-test policies. But absent an obligation to do so, it remains unclear whether employers will choose to implement such a policy given the already challenging staffing issues and the need to comply with the myriad confusing and sometimes contradictory patchwork of laws and regulations enacted by state and local governments. Employers that implement a vaccinate-or-test policy, or other type of policy to address the impact of COVID-19 in the workplace, should ensure that the policy complies with applicable law. Particular attention should be paid to the requirement to accommodate, where appropriate, employees' sincerely held religious beliefs and/or medical conditions.

What does the U.S. Supreme Court Decision do to the OSHA ETS?

In its January 13, 2022, decision, the Supreme Court blocked the OSHA ETS and remanded it back to the Sixth Circuit Court of Appeals to decide the merits of the case. This means that employers are not required to comply with the OSHA ETS at this time and will need to wait for the Sixth Circuit's ultimate decision. The OSHA ETS will not go into effect unless the Sixth Circuit decides it passes legal scrutiny, including any further review by the Supreme Court. Covered employers should “stay tuned” as to the fate of the OSHA ETS in the Sixth Circuit.

What does the U.S. Supreme Court Decision do to the CMS Interim Rule?

The Court also stayed temporary injunctions that prevented the CMS Interim Rule from being implemented. The Court's Order means the CMS Interim Rule is now enforceable in all states—effective immediately—

pending the outcomes of lawsuits challenging the CMS Interim Rule before the Fifth and Eighth Circuit Court of Appeals. Healthcare providers covered by the CMS Interim Rule should continue to work with legal counsel to ensure that they are in compliance with the requirements and timelines imposed by the Interim Rule.

Does the U.S. Supreme Court Decisions Address Executive Order 14042?

The Court's January 13, 2022, decisions did not address Executive Order (EO) 14042 (along with the Safer Federal Workforce Task Force COVID-19 Workplace Safety Guidance). The Executive Order mandates federal contractors to require COVID-19 vaccination for their employees, with no testing option. EO 14042 was enjoined on November 30, 2021, and stayed nationwide. The enforceability of EO 14042 is currently pending before the Eleventh Circuit. Briefing is not scheduled to be complete until February 22, 2022, rendering any meaningful court guidance on the viability of EO 14042 unlikely before March 2022.

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