

US Supreme Court Blocks OSHA's Vaccine-or-Test Mandate

January 14, 2022

On January 13, 2022, the US Supreme Court (SCOTUS) granted the consolidated applications for stays of the federal Occupational Safety and Health Administration emergency temporary standard (ETS), including the vaccine-or-test mandate, on the grounds that OSHA had exceeded its regulatory authority without clear congressional authorization. Specifically, the majority SCOTUS opinion analyzed the authority granted to OSHA under the Occupational Safety and Health Administration Act and ruled that OSHA's authority under the act was limited to occupational safety hazards, whereas COVID-19 is a general risk that is not particular to the workplace.

SCOTUS did not block the vaccine mandate applicable to workers in nursing homes, hospitals and other facilities that receive federal funds.

Must employers implement the OSHA ETS mandate?

No. SCOTUS blocked the OSHA ETS vaccine-or-test mandate pending further proceedings.

What is the likely future of the OSHA ETS mandate?

The enforceability of the OSHA ETS mandate is cast into serious doubt by the ruling. While SCOTUS only ruled on whether the mandate should be stayed pending a final resolution of the lawsuit regarding its enforceability, it held that the applicants seeking to invalidate the OSHA ETS "are likely to succeed on the merits of their claim that the Secretary lacked authority to impose the mandate." To that end, the premise of the decision – that OSHA lacked statutory authority – cuts to the core of the issue of whether the mandate is enforceable, and thus it is unlikely that it would ultimately be upheld.

What if an employer already implemented a vaccination policy or other measures called for by the OSHA ETS?

An employer is not prohibited from voluntarily maintaining a vaccination policy or implementing the other measures in the OSHA ETS, subject to state or local laws that prohibit or limit such policies, as well as anti-discrimination laws.

What about local and state laws requiring vaccination?

All local and state laws unrelated to the OSHA ETS requiring masks, vaccination or related protocols remain in effect. It remains to be seen whether US states, which have broader authority to regulate health and safety issues, will impose their own mandatory vaccination policies or will expressly prohibit them. Some states already have statutes that limit employers' ability to implement a mandatory vaccination policy and these statutes, which would have been preempted by the OSHA ETS, remain in effect.

What about the federal contractor vaccine mandate?

The federal contractor vaccine mandate was blocked nationwide by a Georgia federal court, and in Ohio,

Tennessee and Kentucky by a Kentucky federal court. There are pending appeals of those decisions that also may reach SCOTUS. The vaccine mandate applicable to federal contractors is not being enforced by the federal government while lawsuits and related appeals make their way through the legal system.

If you have any questions about or related to the vaccine mandates, please reach out to a member of the Cooley employment team.

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