



Supreme Court Overturns Biden Vaccine Mandate for Private Employers

Client Advisories

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In a decision issued on January 13, 2022, the Supreme Court of the United States prohibited the Occupational Safety and Health Administration (OSHA) from implementing or enforcing the Biden Administration's COVID-19 Emergency Temporary Standard (ETS), which would have required that all businesses with 100 or more employees require that all employees either provide proof of vaccination or submit to weekly COVID-19 testing to attend work.

The Court's 6-3 majority decision is rooted in the conclusion that COVID-19 does not pose an *occupational* hazard in many workplaces; the Court compared the different risks faced by "lifeguards and linemen" and "medics and meatpackers." Since ETS fails to draw *any* distinctions between industries, the Court ruled that ETS exceeds OSHA's limited statutory authority to ensure *occupational* safety and health. However, the Court left open the possibility that OSHA could lawfully impose more targeted regulations similar to ETS where the particular features of a job or workplace – such as crowded or cramped workplaces – pose special dangers associated with COVID-19. The Court did not address the specific criteria that would apply to the evaluation of such targeted regulations.

In a separate decision announced at the same time, the Court upheld the Department of Health and Human Services' COVID-19 vaccination policy applicable to certain healthcare workers. The Court's slim 5-4 decision illustrates the difficulty in predicting whether a majority of the Court will endorse federal vaccine mandates in other specific circumstances.

U.S. Secretary of Labor Marty Walsh quickly announced that OSHA would consider all options in light of the Court's rulings. We will provide an update if and when OSHA announces new COVID-19 regulations.

It is important to note that while the Court struck down ETS as a federal, nationwide requirement, the Court's decision does *not* impact the validity of state and local COVID-19 regulations, or vaccine/testing requirements imposed voluntarily by private businesses.

If you have any questions regarding the COVID-19 vaccine and/or testing requirements, please contact **Peter Frattarelli** at 856-354-3012 or pfrattarelli@archerlaw.com, or any member of Archer's **Labor and Employment Group**.

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