



## COMPLIANCE BULLETIN

### **SUPREME COURT BLOCKS OSHA VACCINE-OR-TEST MANDATE BUT ALLOWS VACCINE MANDATE FOR HEALTHCARE WORKERS TO PROCEED**

Oral arguments on the OSHA vaccine-or-test mandate and vaccine mandate for healthcare workers were heard on January 7, 2022. As a result, the U.S. Supreme Court has issued two opinions with different outcomes on January 13th. Both opinions are discussed in greater detail below.

#### OSHA Vaccine-or-Test Mandate

In a 6-3 decision, the Court has blocked the OSHA vaccine-or-test mandate applicable to employers with 100 or more employees. This mandate, which became effective January 10, 2022, required employers with at least 100 employees to mandate COVID-19 vaccinations or implement a weekly testing protocol. A stay was issued on the mandate by the Fifth Circuit Court of Appeals in November 2021 and then reinstated by the U.S. Court of Appeals for the Sixth Circuit in December 2021, but was immediately appealed. The Court's opinion states in part that "although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly." The Court's decision to stay the mandate does not mean that Congress could not impose a similar mandate if it wishes to do so. Additionally, states and businesses can impose a mandate of their own.

The Supreme Court's decision blocks the implementation while the mandate is with the lower courts. While we are waiting for additional guidance, the Biden Administration is no longer able to move forward with the vaccine-or-test mandate. Employers that would have been impacted by the OSHA mandate would not have been subject to the requirements under the mandate until February 9, 2022, had the Court issued this decision and stayed the mandate. The Court's full opinion can be found [here](#).

#### Healthcare Worker Vaccine Mandate

The Court also heard oral arguments on the vaccine mandate applicable to healthcare workers working in health care facilities participating in Medicare and Medicaid programs. Unlike the OSHA mandate, there is no option for individuals to test weekly under the healthcare worker mandate. The mandate was challenged in several states and stayed nationwide shortly after implementation. However, on December 28, 2021, the Centers for Medicare and Medicaid Services (CMS) announced it would enforce the mandate for states not directly impacted by the stay. The Court's 5-4 decision relies on CMS's authority under federal law which allows the Secretary to impose conditions on Medicare and Medicaid funds. Based on the Court's decision, the vaccine mandate for healthcare workers will proceed nationwide.

Health care facilities should prepare to comply with the vaccine mandate by the due dates outlined by CMS. Additional information on the vaccine mandate for health care facilities can be found [here](#). The Court's full opinion can be found [here](#).

If you have any questions, please contact us at [icomply@ibpllc.com](mailto:icomply@ibpllc.com).

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