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Legal Alert, COVID-19 News & Legal Alerts

U.S. SUPREME COURT STAYS ENFORCEMENT OF OSHA'S COVID-19 VACCINE-OR-TEST MANDATE, WHILE UPHOLDING VACCINE MANDATE FOR HEALTHCARE WORKERS

January 14, 2022

On January 13, 2022, the U.S. Supreme Court issued an opinion in which it ordered a stay on the enforcement of the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS) pending disposition of the lawsuit challenging the rule in the Sixth

Circuit Court of Appeals. OSHA's ETS would have required many private employers with 100 or more employees to mandate vaccination or weekly COVID-19 testing of their employees who work on-site. The Supreme Court's decision means that OSHA is prevented from enforcing the ETS at least until the lower court renders a decision in the case.

In a separate opinion, the Supreme Court upheld the Centers for Medicare and Medicaid Services (CMS) rule, which generally mandates vaccination for all healthcare workers employed by facilities that receive Medicare or Medicaid funds throughout the United States. The opinions were issued nearly a week after the Supreme Court justices heard oral argument on challenges to both mandates.

With respect to the OSHA ETS, the Supreme Court, by a 6 to 3 vote, held that OSHA exceeded its authority by seeking to impose the vaccine-or-test mandate. The majority stated that "[a]lthough 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. Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category." (The Supreme Court's opinion on the OSHA ETS can be found [here](#).)

In contrast, the Supreme Court, by a 5 to 4 vote, held the Secretary of Health and Human Services, who administers both Medicare and Medicaid, acted within its authority by issuing a vaccine mandate for healthcare workers employed at facilities receiving Medicare and Medicaid funding. (The Supreme Court's opinion on the CMS rule can be found [here](#).)

The Supreme Court's ruling means that covered healthcare facilities must be aware of their obligations under the CMS rule, as well as upcoming compliance deadlines. Covered facilities should accordingly

review the general guidance issued by the CMS on December 28, 2021, in conjunction with applicable provider-specific guidance.

If you have any questions, please contact the Harris Beach attorney with whom you usually work.

This alert does not purport to be a substitute for advice of counsel on specific matters.

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