

U.S. Supreme Court Blocks Vaccine Mandate for Large Employers, Upholds it for Health Care Workers

January 14, 2022

On Thursday, January 13th, the U.S. Supreme Court rendered a 6-3 decision to temporarily block a Biden administration COVID-19 vaccine mandate for private employers. In a related but separate 5-4 decision, the high court allowed a vaccine mandate for health care workers at facilities receiving federal funding.

No Federal Mandate for Large Private Companies

Had it been upheld, the private employer mandate would have applied to businesses with 100 or more employees and targeted roughly 84 million workers nationwide – nearly half the U.S. workforce. The Emergency Temporary Standard (“ETS”) promulgated by the Occupational Safety and Health Administration (“OSHA”) would only apply to those businesses not already requiring their employees who were not entitled to a religious or medical exemption to be fully vaccinated against COVID-19 or submit to regular (generally weekly) COVID-19 testing and wear a face covering. Enforcement began for most provisions of the ETS on January 10th, but the testing requirements would not have been enforced until February 9th.

However, the Court took issue with OSHA’s unprecedented mandate. In the Court’s words, “OSHA has never before imposed such a mandate. Nor has Congress. Indeed, although Congress has enacted significant legislation addressing the COVID-19 pandemic, it has declined to enact any measure similar to what OSHA has promulgated here.” Further, the Court held that the mandate exceeded the authority Congress granted OSHA when it created the agency in 1970.

The Court therefore granted the requested stay, effectively suspending the ETS. The Court’s decision takes immediate effect and will remain in place while the case challenging the ETS is litigated in the lower courts. A copy of the decision is available [here](#).

Federal Vaccine Mandate Approved for Health Care Workers

On the other hand, the Court ruled 5-4 to stay the injunctions issued by lower courts regarding a vaccine mandate for health care workers at facilities receiving federal funding. In other words, the Court ruled to allow the mandate to remain in force while the two cases challenging the mandate are litigated in the lower courts.

The narrower health care mandate will be administered by Health and Human Services' Centers for Medicare & Medical Services ("CMS") and applies to an estimated 17 million workers. In addition, the health care mandate requires full COVID-19 vaccination and does not include a weekly testing alternative, but does permit religious and medical exceptions.

The Court found that the Department of Health and Human Services had the statutory power to impose a vaccine mandate. The Court reasoned that "[b]oth Medicare and Medicaid are administered by the Secretary of Health and Human Services, who has general statutory authority to promulgate regulations 'as may be necessary to the efficient administration of the functions with which [he] is charged.' One such function — perhaps the most basic, given the Department's core mission — is to ensure that the health care providers who care for Medicare and Medicaid patients protect their patients' health and safety."

A copy of the Court's decisions are available [here](#) and [here](#).

Unanswered Questions for State Vaccine Requirements

Today's rulings do not prevent private companies from issuing their own vaccination and testing requirements, nor do these rulings impact the ability of individual states to promulgate their own vaccine mandates, as those mandates would be subject to state law.

If you have questions regarding any implications of these rulings or their potential effect on your higher education institution, school, or business, feel free to contact James G. Ryan at (516) 357-3750 or jryan@cullenllp.com, Jennifer A. McLaughlin at (516) 357-3889 or jmclaughlin@cullenllp.com, , Jennifer E. Seeba at (516) 296-9173 or jseeba@cullenllp.com, or Kevin P. McDonough at (516) 357-3787 or kmcdonough@cullenllp.com.

Thank you to Ryan Duffy for his assistance with this client alert.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Practices

- Higher Education

Attorneys

- Jennifer A. McLaughlin
- Jennifer E. Seeba
- Kevin P. McDonough