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CLIENT BULLETIN

BREAKING NEWS: U.S. SUPREME COURT STOPS FEDERAL VACCINE MANDATE

January 13, 2022

The U.S. Supreme Court today issued a stay prohibiting the federal Occupational Safety and Health Administration (OSHA) from enforcing a national vaccine mandate. The Biden administration Labor Department mandated last November that all workers in businesses employing at least 100 employees had to receive a COVID-19 vaccine. In a 6-3 opinion, the high court granted a request to stop the rule from going into effect. ([National Federation of Independent Business v. Department of Labor \(2022\) 595 U.S. _____.](#))

Ruling in a separate case, the Court allowed the Secretary of Health and Human Services to require the vaccine for Medicare and Medicaid providers. The rule applies to healthcare workers in facilities such as nursing homes and hospitals. The Court found this narrower mandate to be justified by the risk of COVID-19 exposure to the sick and elderly as well as the secretary's authority to control infections in Medicare and Medicaid facilities. ([Biden v. Missouri \(2022\) 595 U.S. _____.](#))

Court Finds OSHA Lacks Authority to Mandate Vaccinations

Under the OSHA rule, covered employers must enforce a mandatory COVID-19 vaccination policy, verify and record proof of the vaccination status of every employee, and remove all unvaccinated employees from the workplace. Employers may, but are not required to, offer exemptions such as weekly testing and face coverings for unvaccinated employees. There are substantial fines if employers do not comply with the regulation.

The justices rejected the vaccine mandate as "a broad public health measure", not a workplace safety rule of the type OSHA is authorized by Congress to make and enforce. OSHA's authority is limited to the workplace – addressing occupational hazards and work-related employee health and safety. The federal government claims contracting COVID-

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19 is a workplace risk that OSHA is allowed to regulate, but the court rejected that argument. “Permitting OSHA to regulate the hazards of daily life – simply because most Americans have jobs and face those same risks while on the clock – would significantly expand OSHA’s regulatory authority without clear congressional authorization.”

The Supreme Court’s ruling joins other decisions by the conservative majority in recent years that restrain federal agencies from enforcing rules and regulations the agencies have not been authorized by Congress to make. The majority justices noted in today’s ruling that its past decisions, like the one today, attempt to prevent “government by bureaucracy supplanting government by the people.” While the three dissenting justices urged support for OSHA’s emergency temporary standard as a life-saving measure, the majority on the Court left to the legislative branch, not to the president, the authority to mandate vaccinations as a matter of public health.

Vaccine Litigation Will Continue; State and County Mandates Not Affected

The Court’s action today does not mean the federal vaccine mandate is dead in the water. Today’s ruling enjoins, or stays, implementation of the OSHA rule while the parties continue to litigate the vaccine mandate in the U.S. Sixth Circuit Court of Appeals.

Most importantly, today’s ruling does not affect state and county mandates for public employees, healthcare workers, customers and businesses. The ruling puts a hold on the Biden administration’s national vaccine mandate but does not prohibit states and counties from imposing local vaccine policies. Private businesses remain free to set their own vaccination standards within those guidelines.

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