

# EMPLOYMENT LAW UPDATE

## Supreme Court Puts OSHA COVID-19 Emergency Temporary Standard On Hold

On January 13, 2022, the U.S. Supreme Court granted a temporary stay of the federal Occupational Safety and Health Administration's ("OSHA") COVID-19 Vaccination and Testing Emergency Temporary Standard ("ETS"). The ETS applied to employers with 100 or more employees and required employers to adopt a mandatory vaccination policy or a weekly testing and mask policy.

In a 6-3 decision, the Court ruled that OSHA overstepped its authority by implementing such a broad mandate, finding that the ETS was a "significant encroachment into the lives—and health—of a vast number of employees." The Court went on to state that OSHA was authorized to set workplace safety standards, but that the ETS represented a much broader public health mandate. The Court left open the possibility that OSHA could implement more targeted regulations to address the risks of COVID-19 in certain industries or work environments, specifically mentioning "researchers who work with the COVID-19 virus" or "particularly crowded or cramped" work environments.

The Court's decision stays the ETS, but the underlying case remains with the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit will now hear argument on the merits of the case. However, the Supreme Court's decision this week gives a clear indication as to how it will likely rule should the case return to the Supreme Court on appeal.

### **CMS Mandate**

In a separate decision issued the same day, the Supreme Court found that the federal government could enforce a vaccination mandate issued by the Centers for Medicare & Medicaid Services ("CMS"). The Court held that CMS had the authority to issue the rule "to ensure that the healthcare workers who care for Medicare and Medicaid patients protect their patients' health and safety." The CMS mandate applies to facilities that participate in the Medicare or Medicaid programs.

### **Federal Government Contractor Mandate**

The vaccination mandate stemming from Executive Order 14042 was not before the Supreme Court this week, and it remains on hold as a result of a nationwide injunction issued by a federal district court in Georgia. The government has made clear it is not currently enforcing the mandate. Although not before the Supreme Court, the decisions issued this week indicate that the Court will, in all likelihood, strike down the federal government contractor mandate.

## **Conclusion**

Notwithstanding these recent rulings pertaining to various federal COVID-19 mandates, employers still must be mindful of and comply with applicable state and local pandemic safety laws. In Virginia, employers currently remain bound by the Virginia Department of Labor and Industry's Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19; however, the fate of the Standard is questionable with Governor-Elect Youngkin being sworn in tomorrow. In Maryland, "essential employers" must comply with the Maryland Essential Workers Protection Act during a catastrophic health emergency. Employers who are not covered by another federal, state, or local COVID-19 safety law may choose to implement whatever vaccination or testing policy is most appropriate for their workplace. Of course, employers should continue to monitor the actions of the federal government, as well as state and local governments, and ensure that all COVID-19 policies comply with other applicable laws, like Title VII and the Americans with Disabilities Act.

We recommend that you work closely with counsel to determine what mandates, regulations, and laws apply to your workplace and to ensure that your policies comply with all applicable laws.

***More Questions?  
We are here to help.***

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***Our benefits team would be glad to assist***

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