

**US SUPREME COURT SUSPENDS OSHA COVID-19 VACCINATION AND TESTING  
EMERGENCY TEMPORARY STANDARD, BUT MAINTAINS HEALTHCARE ETS**

On January 13, 2022, the Supreme Court issued a Per Curiam opinion in the case of National Federation of Independent Business, et al., v. Department of Labor, OSHA, et al, 595 U. S. \_\_\_\_ (2022) which stayed implementation of the Occupational Safety and Health Act's (OSHA) COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402, pending disposition of the National Federation and the State of Ohio's petitions for review in the United States Court of Appeals for the Sixth Circuit. This means that the Emergency Temporary Standard ("ETS") issued on November 4, 2021 which requires covered employers to develop, implement and enforce a mandatory COVID-19 vaccination, testing and masking policy is suspended indefinitely and is no longer in effect until further review by the lower court. The ETS applies to employers with 100 or more employees.

The Supreme Court noted the broad reach of the mandate which requires 84 million Americans to either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense and stated that OSHA has never imposed such a broad mandate and that Congress has not enacted any measure similar to what OSHA promulgated.

The Court stated that although COVID-19 is a risk that occurs in many workplaces, it is not an occupational hazard in most workplaces. The Court described COVID-19 as the kind of universal risk that can and does spread at home, in schools, during sporting events, and everywhere else that people gather, similarly to other general risks such as crime, air pollution, or any number of communicable diseases which fall outside of OSHA's authority and field of expertise. Thus, OSHA's provisions typically speak to hazards that employees face at work and not to public health issues more generally.

The Court found that the Applicants questioning the mandate are likely to succeed on the merits of their claim that the Secretary lacked authority to impose the mandate. The Supreme Court considered that the Act does not authorize the OSHA mandate because it empowers the Secretary of Labor to set **workplace** safety standards, not broad public health measures, such as the vaccine and testing mandate.

At the same time, the Supreme Court ruled that the Centers for Medicare & Medicaid Services' vaccine mandate for certain healthcare workers would remain in place. This separate mandate affects workers in nursing homes, hospitals, and other facilities that receive Medicare and Medicaid payments from the Federal Government.

Employers must bear in mind that they are still required to comply with requirements enacted by the Puerto Rico Government, including those established in Executive Order No. 2021-87 (EO) of December 31, 2021, which requires first responders and certain private sector employees to receive the COVID-19 vaccine booster shot in order to be considered fully vaccinated. The EO requires covered employees to receive the booster shot by January 31, 2022. The EO applies to employees working in supermarkets, bars, restaurants, and other food service businesses. Executive Order No. 2022-03 issued

on January 13, 2022 extended the same requirements to employees at hotels, theaters, cinemas, coliseums, convention and community centers, who must receive the booster shot by February 15, 2022.

If you have any question or concern, please **Contact us**

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