

# LEGAL ALERT

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## SUPREME COURT BLOCKS OSHA'S VACCINE-OR-TEST RULE FOR LARGE EMPLOYERS, UPHOLDS MANDATE FOR HEALTHCARE WORKERS

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On January 13, 2022, the United States Supreme Court blocked the emergency standard issued by the Occupational Safety and Health Administration (OSHA) that would have required employees at businesses with 100 or more employees to get vaccinated or submit a weekly negative COVID test. The Court allowed a narrower rule to take effect requiring vaccination for health care workers at facilities receiving federal funding.

In a 6 to 3 decision, with Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor dissenting, the Court found that OSHA's emergency standard went beyond the agency's authority to regulate occupational hazards. The Court wrote, "Although 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."

The dissent argued that OSHA's emergency standard was analogous to a fire or sanitation regulation imposed by the agency. The majority disagreed, noting that, "a vaccine mandate is strikingly unlike the workplace regulations that OSHA has typically imposed" because vaccination "cannot be undone at the end of the workday."

The dissenting justices concluded by stating, "As disease and death continue to mount, this Court tells the agency that it cannot respond in the most effective way. Without legal basis, the Court usurps a decision that rightfully belongs to others."

In contrast to OSHA's emergency standard, the Court voted 5 to 4 to uphold mandatory vaccination for Medicare and Medicaid providers. In this case, Chief Justice John Roberts and Justice Brett Kavanaugh agreed with the Court's more liberal justices. Unlike OSHA's emergency standard, the Court said the vaccine mandate for health care workers was justified by the spending clause of the Constitution, which authorizes the ability of the federal government to impose conditions when it is providing the funding.

The opinion also noted that the health care mandate is necessary because it impacts facilities responsible for the health of others. “It would be the very opposite of efficient and effective administration for a facility that is supposed to make people well to make them sick with COVID-19.”

Hahn Loeser’s Labor and Employment Group will continue to monitor and report on further developments.

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