

Supreme Court Stays OSHA ETS, Upholds CMS Vaccination Mandate

On January 13, 2022, the Supreme Court of the United States issued two decisions addressing the Occupational Safety and Health Administration's (OSHA) Vaccination and Testing Emergency Temporary Standard (ETS) and the Center for Medicare & Medicaid Services (CMS) vaccination mandate.

The Supreme Court put the OSHA ETS on hold, finding the ETS was more akin to a general public health measure rather than an "occupational safety or health standard." The stay will remain in place pending a review of the merits of the ETS by the U.S. Court of Appeals for the Sixth Circuit and, if necessary, another review by the Supreme Court. The practical implications of the Supreme Court's decision means that OSHA cannot enforce the ETS unless and until the Sixth Circuit resolves questions about the legality of the ETS and does so in favor of OSHA. In the interim, OSHA will continue to inspect workplaces and assess for COVID-19 protocols, so employers should continue to keep in place protocols consistent with prior OSHA guidance, discussed [here](#).

In contrast, the Supreme Court upheld the CMS vaccination mandate that requires health care workers in Medicare- or Medicaid-certified facilities to be fully vaccinated against COVID-19. Prior to the court's decision, the mandate was on hold in 25 states that challenged the rule. Now, covered facilities in those states must ensure that their workers are fully vaccinated no later than February 28, 2022.

If you have questions regarding the Supreme Court's decisions or on your COVID-19 policies, contact Brittany Lopez Naleid, [Shannon Toole](#) or your Reinhart attorney.

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