

Bodman PLC

January 2022

Supreme Court Split Decision: Employer Vaccine-or-Test Rule Blocked; Health Care Vaccine Mandate Upheld

By: Alexander J Burridge, Associate, Workplace Law Group

On January 13, 2022, the Supreme Court issued two decisions regarding requests to enjoin rules issued by federal agencies intended to increase vaccination rates.

Occupational Safety and Health Administration's ("OSHA") Emergency Temporary Standard ("ETS")

The Supreme Court enjoined OSHA's implementation of its ETS, which required employers with 100 or more employees to mandate vaccinations or require unvaccinated workers to weekly provide a negative test in order to perform in-person work. The Supreme Court reasoned that "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 Bottom Line: Employers with 100 or more employees, at this time, do not need to require mandatory vaccination or subject employees to vaccine-or-test policies. However, it is still recommended that employers create safety protocols designed to protect workers against the spread of COVID-19 because they have a general duty under state and federal safety laws to provide a safe and healthful workplace.

Centers for Medicare & Medicaid Services ("CMS") Interim Final Rule

The Supreme Court dissolved the injunction blocking the CMS Interim Final Rule, allowing CMS to proceed with enforcement of the requirement that covered health care facilities administer COVID-19 vaccine mandates. The Court ruled that Congress authorized the Secretary of Health and Human Services to impose conditions on the receipt of Medicaid and Medicare funds that are necessary for "the health and safety of individuals who are furnished services." The Supreme Court reasoned that 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."

A covered health care facility that fails to comply with the Interim Final Rule risks monetary penalties, denial of payment for new admissions, and termination of participation in various programs.

Next Steps

These two cases will proceed in the applicable appellate courts to determine whether permanent (as opposed to preliminary) injunctions are warranted. The stay of the OSHA ETS will remain in place until a decision is reached by the appellate court and during the pendency of any request for additional Supreme Court review. While the Supreme Court’s rulings on each respective injunction do not restrict the appellate court’s authority to rule differently on the merits, they will carry substantial weight.

Bodman’s Workplace Law Group is monitoring updates on the enforcement of the federal vaccine regulations. Employers can contact any member of Bodman’s Workplace Law Group for help creating and implementing written vaccine or other safety policies. Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

WORKPLACE LAW PRACTICE GROUP	AARON D. GRAVES Chair 313.392.1075 agraves@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN 248.743.6077 jcashen@bodmanlaw.com
	GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com	MELISSA M. TETREAU 248.743.6078 mtetreau@bodmanlaw.com
	REBECCA C. SEGUIN-SKRABUCHA 313.393.7594 rseguin-skrabucha@bodmanlaw.com	MICHELLE L. KOLKMEYER 248.743.6031 mkolkmeyer@bodmanlaw.com	ALEXANDER J. BURRIDGE 313.393.7560 aburridge@bodmanlaw.com
	DAVID B. WALTERS 248.743.6052 dwalters@bodmanlaw.com	KAREN L. PIPER Of Counsel 248.743.6025 kpiper@bodmanlaw.com	