

Supreme Court Hears Arguments in Vaccine Mandate Cases but Status of Mandates Remains Unresolved

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On Jan. 7, 2022 the U.S. Supreme Court heard oral arguments in separate cases challenging two vaccine mandates—OSHA's Emergency Temporary Standard (ETS) on vaccination or testing for employers with 100 or more employees, and the Centers for Medicare and Medicaid Services' (CMS) vaccine rule for certain healthcare employers. The Court is considering whether “stays” (temporary injunctions) imposed by lower courts to block the mandates were issued properly.

As of Jan. 12, 2022 at 12:00 noon, the Supreme Court has not issued rulings in either case. The U.S. Court of Appeals for the Sixth Circuit entered the last court decision on the status of OSHA's ETS on Dec. 17, 2021. That decision dissolved a prior stay of the ETS, and had the practical effect of removing any court barrier to implementation and allowing the OSHA mandate to move forward.

After the Sixth Circuit ruling, ETS challengers immediately asked the Supreme Court to reimpose the stay, blocking implementation of the OSHA mandate. However, as of the time of this article's publication, the ETS is in effect in the approximately 30 states where OSHA enforces workplace safety and health requirements for private employers, and covered employers in those states are expected to be in compliance with the ETS.

In North and South Carolina, the ETS has not yet taken effect because both states are “state plan” states, and workplace safety and health requirements are enforced by state regulators rather than OSHA. The state OSHA agencies in both states have stated that they are waiting to learn the outcome of the Supreme Court ETS case before deciding on their enforcement strategies.

If you have questions about compliance with vaccine mandates or other workplace safety and health requirements, contact a member of Nexsen Pruet's Employment and Labor Law practice group.