

Update on Federal Vaccine\Testing Mandates

01.14.2022

Yesterday the Supreme Court ruled on the OSHA vaccine or test rule along with the federal requirement for healthcare workers to be vaccinated. Here is the state of these mandates as of January 14, 2022:

1. Private Employers with 100 or More Employees – OSHA Order

Status of the Order: ORDER IS STAYED – The US Supreme Court stayed implementation on January 13, 2022.

Effective Date of Order: The OSHA Emergency Standard was in effect, but enforcement had been delayed until February. It is now stayed indefinitely and has been sent back to the Court of Appeals for the 6th Circuit for further proceedings.

2. Federal Employee and Federal Contractors

Status of the Order: NO CHANGE. The Order is still stayed pending an appeal.

3. Healthcare Workers and Those Working in Most Healthcare Facilities – CMS Order

Status of the Order: IN FORCE NATIONWIDE – The Supreme Court has allowed this order to take effect. Accordingly, the partial stay that was in effect in some states as discussed in our prior update is now lifted.

Effective Date of the Order: The Order became effective through two deadlines. The first deadline for employees to receive the first dose of the vaccine has already passed (December 6, 2021). The second deadline has also now passed (January 4, 2022) to be fully vaccinated. CMS had stated that it would hold off from enforcing the Order due to the litigation. With yesterday's order from the Supreme Court, CMS is likely to issue new guidance in the coming days on its enforcement policy.

PROFESSIONALS

Paul O. Catenacci

David A. Malinowski

Michael A. Novara

John I. Tesija

PRACTICE AREAS

Employee Benefits/ERISA

As we have previously noted, it is important to keep in mind that both states and private employers retain significant leeway to require vaccination, subject to accommodation for sincerely held religious beliefs or medical reasons. While the stay of the OSHA order may lessen the incentive to obtain at-home tests under the recent DOL guidance, it remains possible that private employers, as well as state or local governments, may implement testing programs that accept at-home tests administered by a third party.

We will keep you posted on any developments. If you have questions or would like more information on this topic, please contact us.