

Breaking News: Supreme Court Stays OSHA COVID-19 Vaccination Standard

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Just about an hour ago, the Supreme Court reinstated a nationwide stay of OSHA's temporary emergency standard related to COVID-19, including the vaccination/testing requirements that were scheduled to be enforced starting in February. The court, in an unsigned opinion that appears to have been supported by a 6-3 majority (Justices Breyer, Sotomayor and Kagan dissented), held that the challengers to the rule were likely to succeed on the merits of their argument that the rule exceeded OSHA's statutory authority. Critically, the Court asserted that the OSH Act "empowers the Secretary to set *workplace* safety standards, not broad public health measures." (emphasis original)

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. Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category.

Accordingly, the standard is no longer enforceable and will not be unless and until the Supreme Court lifts the stay.

It is important to note, however, that OSHA enforcement in this area is likely to continue under the guise of the "general duty clause," which requires employers to provide a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees." Accordingly, companies need to assess whether they are, in light of OSHA and other public guidance, taking appropriate steps to protect their employees from the virus.

A copy of the Court's opinion is available here: [21A244 National Federation of Independent Business v. OSHA \(01/13/2022\) \(supremecourt.gov\)](#).