



MANCHEL BRENNAN

COUNSELLORS AT LAW

EMPLOYMENT LAW ALERT (JANUARY 14, 2022)

SUPREME COURT STAYS OSHA'S COVID-19 VACCINATION MANDATE

On January 13, 2022, the United States Supreme Court issued its ruling on the Emergency Temporary Standard (“ETS”) published last year by the Federal Occupational Safety and Health Administration (“OSHA”). The ETS directed employers with 100 or more employees to implement a policy which, among other things, would require employees to be vaccinated (or, if the employer elected, to undergo weekly COVID-19 testing in lieu of vaccination). The ETS had been the subject of numerous court challenges, with different and sometimes conflicting outcomes. The Supreme Court’s ruling resolves these conflicts, at least for now, by holding that OSHA exceeded its authority in issuing the ETS, and that the ETS is “stayed” because the challengers are likely to prevail in their cases pending in the lower courts.

What do employers do now?

- **OSHA ETS:** Employers with 100 or more employees are **no longer required** to adopt a mandatory vaccination policy. Employers may still choose to do so voluntarily, and may either keep, rescind, or modify any ETS policy they already put in place.
- **CMS Mandate:** The Supreme Court did, however, **uphold** the vaccination mandate by the Federal Centers for Medicare and Medicaid Services (“CMS”), which applies to certain healthcare institutions. Employers covered by the CMS mandate must implement the first phase of the program by January 27, 2022 (all employees must have the first dose of the vaccination, absent an approved religious or medical exemption), and the second phase by February 28, 2022 (all employees must have the second dose of the vaccination, absent an approved religious or medical exemption).
- **Federal Contractor Mandate:** Last year, President Biden signed an Executive Order requiring most federal contractors to, among other things, adopt a mandatory vaccination policy. Many legal challenges to the federal contractor mandate have been filed, and there currently is a nationwide “stay” on the enforcement of the mandate issued by one of the lower federal courts. Covered federal contractor employers should monitor these legal challenges, which very likely will end up at the Supreme Court, to determine whether they are required to adhere to the mandatory vaccination policy.
- **State and Local Laws:** Many states and local governments have enacted laws which: require employers to implement a vaccination policy; prohibit employers from implementing a vaccination policy; or require employers that adopt a vaccination policy to include certain provisions (such as provisions for religious and medical exemptions). Employers should monitor the applicable state and local laws to ensure that they are in compliance.

Please feel free to contact us if we can be of any assistance.

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