

## CLIENT ALERT: Supreme Court Blocks OSHA Emergency Temporary Standards Vaccine-or-Test Rule for Large Employers, Allows Vaccine Requirement for Health Care Employers Receiving Federal Funds

On January 13, 2022, the Supreme Court issued a **decision** staying the Occupational Safety and Health Administration's (OSHA) requirement that employers with 100 or more employees require their workers to be vaccinated or produce a negative COVID-19 test on a weekly basis. In a separate case, however, the Court **allowed** a rule that health care employers receiving Medicare and Medicaid funds must ensure that their staff are vaccinated.

OSHA has issued a COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS), requiring employers with 100 or more employees to require that their employees either are vaccinated or alternatively produce a negative test on at least a weekly basis. The ETS **vaccine-or-test mandate** had been challenged in courts, resulting in a temporary suspension of the ETS. On December 17, 2021, the Sixth Circuit Court of Appeals **lifted** the stay, and most ETS requirements took effect on January 10, 2022.

On January 13, the Supreme Court re-instituted the stay of the ETS. The Court stated that OSHA is empowered to set "*workplace safety standards, not broad public health measures,*" and that COVID-19 did not qualify as a "*work-related danger*" which could be regulated by OSHA. The Court found that although COVID-19 was a risk present in many workplaces, it is also present "*everywhere else that people gather,*" and therefore not an occupational risk within the scope of OSHA's regulatory authority. The Court also noted that a vaccine mandate is unlike typical OSHA workplace regulations, as vaccination extends beyond the workplace and "*cannot be undone at the end of the workday.*"

The Supreme Court did note that OSHA could have authority to regulate occupation-specific risks related to COVID-19. Consistent with that observation, the Supreme Court issued a decision in a second case permitting a vaccine mandate requirement for employees of health care facilities receiving Medicare or Medicaid funding to go forward. The Court reasoned that a vaccine mandate for such health care facilities was consistent with the mission of protecting patients' health and safety, and that health care employees are routinely subject to health and safety requirements, including those designed to prevent the spread of infectious diseases.

As the landscape of COVID-19-related requirements and considerations for the workplace continues to evolve on the federal, state and municipal level, MBJ will continue to monitor developments. Please contact your MBJ attorney with any questions you may have.

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*This alert was prepared on January 13, 2022.*

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