



535 Grand Avenue, Grand Junction, CO 81501
PO Box 1449, Grand Junction, CO 81502
970-243-7789 ♦ www.lighthousehrs.net

Compliance Connection

January Part II 2022

Supreme Court Decision on Mandates

On Jan. 13, 2022, the Supreme Court of the United States (SCOTUS) [ruled](#) to stay the Occupational Safety and Health Administration's (OSHA) vaccination and testing emergency temporary standard (ETS). The ETS was developed to establish a mandatory vaccination policy requirement for private employers with 100 or more employees.

ETS Litigation

The ETS went into effect on and has been in litigation since Nov. 5, 2021. It was blocked by the 5th U.S. Circuit Court of Appeals early on but was reinstated by the 6th Circuit on Dec. 17, 2021.

SCOTUS Reasoning

In its published decision, SCOTUS stated that OSHA was not given the power to regulate public health more broadly than occupational dangers. In addition, SCOTUS explained that challenges to the ETS were likely to succeed on the merits because the agency lacks the authority to impose the mandate. Specifically, the OSH Act only allows the agency to set workplace safety standards, not broad public health measures.

Finally, the court argues that the requirement that employees either become vaccinated or undergo weekly testing is not an exercise of federal power. Instead, SCOTUS stated the ETS represents a "significant encroachment into the lives—and health—of a vast number of employees."

Impact on Employers

Given this new stay, employers are not required to comply with the OSHA ETS vaccination and testing mandate at this time. **However, because the case has been sent back to the 6th Circuit, employers will need to continue monitoring legal developments to learn about a final decision on the ETS.**

Healthcare Entities

The Justices allowed the vaccine policy from the US Department of Health and Human Services' Centers for Medicare & Medicaid Services that requires certain health care workers at hospitals, nursing homes, and other facilities that participate in Medicare and Medicaid programs to mandate COVID-19 vaccinations for healthcare workers. See [Biden v. Missouri](#) for more information. Further, the policy allows for medical or religious exemptions. Indeed, SCOTUS indicated that healthcare facilities participating in Medicare and Medicaid programs have been compelled to meet certain requirements.

Here are some deadlines that healthcare facilities should research:

1/27/22: Policies and procedures to be implemented for healthcare facilities. Additionally, all staff must receive one dose of the vaccine unless there is a pending exemption requested or have a temporary delay recommended by the Center for Disease Control (CDC). Employees with approved exemptions must strictly follow to all precautions set forth by CDC.

2/28/22: All staff must receive a completed series for the vaccine per CDC guidelines unless there is a pending exemption requested or have a temporary delay recommended by the CDC. Employees with approved exemptions must strictly follow to all precautions set forth by CDC.

Per the Colorado Health Care Association (CHCA), this may include the following:

- Reassign unvaccinated staff to non-patient areas and duties.
- Require staff who have not completed their primary vaccination series to follow additional [CDC-recommended precautions](#), such as adhering to universal source control and physical distancing measures even if the facility is located in a county with low-to-moderate community COVID transmission. Although OSHA's vaccine mandate is not in effect, there are additional [OSHA-required measures](#) which should also be followed.
- Require at least weekly testing.
- Require use of a NIOSH-approved N95 or equivalent or higher-level respirator for source control, regardless of whether they are providing direct care to or otherwise interacting with patients.

For more information, contact the regulatory agency for your particular entity.

Disclaimer:

Lighthouse HR Support (LHRS) provides practical human resource information and guidance based upon our knowledge and experience in

the industry and with our clients. LHRS services are not intended to be a substitute for legal advice. LHRS services are designed to provide general information to human resources and/or business professionals regarding human resource concerns commonly encountered. Given the changing nature of federal, state, and local legislation and the changing nature of court decisions, LHRS cannot and will not guarantee that the information is completely current or accurate. LHRS services do not include or constitute legal, business, international, regulatory, insurance, tax or financial advice. Use of our services, whether by phone, email or in person shall indicate your acceptance of this knowledge. This information is brought to you in part by CHCA, Zywave, and Mineral.