

## Legislative Update JANUARY 2022\*

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### **U.S. SUPREME COURT ISSUES STAY OF OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S RULE MANDATING COVID-19 VACCINATION OR TESTING WHILE ALSO RULING IN FAVOR OF THE U.S. DEPARTMENT OF HEALTH'S RULE.**

On January 13, 2022, the United States Supreme Court issued a stay on the Occupational Safety and Health Administration (OSHA) COVID-19 Vaccination and Testing Emergency Standard (ETS) pending further review of this issue by the United States Court of Appeals for the Sixth Circuit. The ETS mandates employers with 100 or more employees to require workers to be vaccinated against COVID-19 or undergo weekly testing.

On the same day, January 13, 2022, the United States Supreme Court upheld enforcement authority relating to the emergency regulation issued by the United States Department of Health and Human Services' Centers for Medicare & Medicaid Services (CMS) which requires workers in health care facilities that receive Medicaid or Medicare funding to be fully vaccinated against COVID-19 unless they qualify for a medical or religious exemption. The Supreme Court decided that this requirement is enforceable by CMS while lower appellate courts review pending legal actions.

SHRM External Affairs notes the following takeaways from the Supreme Court's OSHA ruling:

- The OSHA ETS extends beyond the authority that OSHA possesses to regulate occupational health and safety; COVID-19 represents a universal risk and OSHA is not permitted to regulate the hazards of everyday life.
- The OSHA ETS does not take into consideration differences in workplaces and levels of exposure.
- Targeted COVID-19 regulations are permissible where the virus poses a special danger because of the particular features of an employee's job or workplace.
- OSHA mandating vaccinations is unlike any previous workplace regulation as it cannot be undone at the end of the workday.
- The OSHA ETS represents a significant encroachment into the lives -- and health -- of a vast number of employees and is outside of the scope of what OSHA was designed to do.

Source: SHRM External Affairs

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