

Supreme Court Stays OSHA's 100+ Employee Mandate; Health Care Rule Permitted, However

OSHA Mandate, Supreme Court Stay / January 13, 2022 / Andrea Johnson

"There is no crueller tyranny than that which is perpetuated under the shield of law and in the name of justice."

-Montesquieu

"For any young democracy, the most difficult but important step is burying the legacy of tyranny and establishing an economy and a government and institutions that abide by the rule of law. Every country faces challenges to the rule of law, including my own." -Joe Biden

The OSHA Mandate Stayed

The simple answer today is that the United States Supreme Court (split 6 to 3) did as the Constitution called upon it to do: It ruled that the Executive Branch of the government had exceeded its bounds, through an OSHA regulation that mandated employers with 100 employees or more to require all employees to be vaccinated (or be routinely tested, if unvaccinated). The decision, *National Fed. of Indep. Bus. v. the Department of Labor*, Cause Nos. 21A244 & 21A247, 595 U.S. ____ (Jan. 13, 2022) is linked [here](#). Essentially, the Court ruled that OSHA exceeded the authority granted it by congressional statute.

The sheer breadth of the OSHA mandate, at the core, is what troubled the High Court. While the Court held that "targeted regulations" are "plainly" permissible (see the linked slip opinion, at 7), it ruled that, in this case, OSHA had no "broad public health" permission slip to create and enforce the mandate in question, because the mandate applies to all employers, regardless of business type, location, employee tasks, etc. *Id.* at 7-9. In a broad shot, the Court labeled OSHA's approach as "indiscriminate." *Id.* at 7.

Even though the Supreme Court noted that there are equities on both sides of the issue, it also concluded that its job was not to weigh those competing arguments. Instead, harkening back to the fundamentals of U.S. representative government, it concluded:

In our system of government, that [weighing all interests] is the responsibility of those chosen by the people through democratic processes. Although Congress has indisputably given OSHA the power to regulate occupational danger, 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 that latter category.

Id. at 8-9. With those thoughts, the Court, through a *per curiam* decision, separately concurred by Justice Gorsuch (and opposed by Justices Breyer, Sotomayer, and Kagan), stayed the OSHA rule and sent the issue back to the Sixth Circuit for further consideration in line with its decision. *Id.* at 9.

But Lower Court Injunctions as to the Healthcare Workers Stayed

Finally, in a second *per curiam* opinion of the Supreme Court also issued today, the Court (split 5 to 4) held differently as to the healthcare workers' mandate. As to this matter, the Court found that the statutory authority to the Secretary of Health and Human Services was clear. Thus, the Court returned the matter to the lower courts for consideration, staying the original injunctions and, effectively, permitting the mandate in the health care industry to proceed.

Below are links to previous KRCL blogs discussing the OSHA mandate.

- Expected Challenges Facing OSHA's COVID-19 Vaccine Mandate For Large Employers
- OSHA Issues Emergency Temporary Standard for Private Employers with 100-Plus Employees – New Deadline: January 4, 2022
- A New World: 5th Circuit Stays OSHA COVID-Vaccination Mandate ETS, Affecting Employers with 100-plus Employees - Court Finds "Grave Statutory and Constitutional Issues with the Mandate."
- OSHA Ordered to "Take No Steps to Implement or Enforce the Mandate"
- Spate of Recent Court Activity Puts President Biden's Vaccine Mandates in Question, Presenting Dilemmas for Employers

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Andrea Johnson

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