

Labor & Employment Law Alert: The Supreme Court Halts OSHA'S COVID-19 Vaccinate or Test Mandate

The Supreme Court of the United States issued a decision today which precludes the Occupational Safety and Health Administration (“OSHA”) from enforcing its hotly contested mandate that all employers with 100 or more employees require their workers to either be vaccinated against COVID-19 or undergo weekly testing. In a 6-3 vote, the Supreme Court found that OSHA greatly exceeded its limited Congressionally-authorized power by issuing a broad mandate that is “a significant encroachment into the lives—and health—of a vast number of employees.” Because of the ruling, employers are no longer required to comply with the OSHA mandate.

The Supreme Court relied in part on the “major questions doctrine”, which requires federal agencies like OSHA to trace their asserted power to a clear grant of authority from Congress. The Supreme Court noted that although Congress has passed significant legislation addressing COVID-19 during the past two years of the pandemic, it has not passed any law giving OSHA such authority and, in fact, a Senate majority rejected the sole attempt to do so. In a concurring opinion, Justices Alito, Gorsuch and Thomas found that OSHA was being used as a transparent “legislative work around” to do what Congress could not accomplish. It found that OSHA lacked such authority and that Congress limited OSHA’s power “to set[ting] *workplace* safety standards, not broad public health measures.” The Supreme Court further noted that COVID-19 “can and does spread at home, in schools, during sporting events, and everywhere else that people gather” and it “is not an *occupational* hazard” for most workers but akin to other dangers people face each day from other communicable diseases. Therefore, the mandate exceeds OSHA’s limited authority.

However, the decision found that OSHA could issue “targeted regulations” that address occupations where COVID-19 “poses a special danger because of the particular features of an employee’s job or workplace...” This important distinction may result in new OSHA mandates targeted at certain occupations where the risk for exposure to COVID-19 is particularly high. Additionally, it is expected that in response to the decision, New York and other states may attempt to reinstitute the requirement through the state legislature or state agency regulations.

Employers with questions about the implications of this decision or other workplace issues are encouraged to contact one of our [Labor & Employment](#) attorneys.