

EMPLOYER LAW BLOG

# BREAKING: Supreme Court Revives Healthcare Vaccine Mandate to Apply Nationwide

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While the Supreme Court blocked the OSHA vaccine mandate, it took a different approach to the healthcare vaccine mandate. The Court has allowed the healthcare vaccine mandate to go back into effect nationwide for now by staying lower courts' injunctions against the mandate.

Prior to the Court's decision today, these lower courts' injunctions had blocked the mandate from being enforced in roughly half of the states across the country. Now, however, the mandate can be enforced nationwide while other appellate proceedings may play out.

In a per curiam opinion, the Supreme Court concluded that Congress authorized CMS to impose the mandate because the relevant statute empowers it "to impose conditions on the receipt of Medicaid and Medicare funds that 'the Secretary [of Health and Human Services] finds necessary in the interest of the health and safety of individuals who are furnished services.'"

The Court reasoned: "[a]fter all, ensuring that providers take steps to avoid transmitting a dangerous virus to their patients is consistent with the fundamental principle of the medical profession: first, do no harm. It would be the 'very opposite of efficient and effective administration for a facility that is supposed to make people well to make them sick with COVID-19.'"

The Court added that "[v]accination requirements are a common feature of the provision of healthcare in America: Healthcare workers around the country are ordinarily required to be vaccinated for diseases such as hepatitis B, influenza, and measles, mumps, and rubella." And "[a]ll this is perhaps why healthcare workers and public health organizations overwhelmingly support" the mandate.

The Court also rejected the challengers' claim that the mandate was "arbitrary and capricious" or that its issuance failed to comply with administrative rulemaking procedures. The Court emphasized that its review of such challenges is "to 'simply ensur[e] that the agency has acted within a zone of reasonableness.'" And the Court ultimately concluded CMS made a specific and adequate record of the reasons for its decisions and the timing of its actions in that regard.

Two separate dissenting opinions, however, were filed. Justice Thomas filed a dissenting opinion that was joined by Justices Alito, Gorsuch, and Barrett. And Justice Alito filed his own dissenting opinion that was joined by Justices Thomas, Gorsuch, and Barrett.

While both dissents concluded CMS failed to show Congress clearly authorized the agency to impose the vaccine mandate, Justice Alito focused much of his opinion on criticism of what the agency did (and did not do) during the administrative rulemaking process.

At the end of the day, although the Court was sharply divided 5-4, the takeaway is that the Court's decision today means the healthcare vaccine mandate will go back into effect in all states and, almost certainly, remain in effect. Be sure to check back for more updates.