

# compliance ALERT

## Supreme Court Blocks OSHA Vaccine Mandate for Large Employers; Allows Healthcare Worker Mandate to Proceed

January 14, 2022

### Action Required:

- Covered employers (those with 100 or more employees) are not currently required to comply with the ETS.
- Employers with covered healthcare workers need to continue complying with the CMS vaccination requirement.
- Continue to comply with all other federal, state, and local requirements pertaining to COVID-19 vaccination and testing.

On January 13, 2022, the U.S. Supreme Court [blocked](#) the OSHA COVID-19 Emergency Temporary Standard (ETS) [regulation](#) - a rule requiring employers with 100 or more employees to either mandate that employees be vaccinated against COVID-19 or undergo weekly testing.

On the same day, the Court [upheld](#) a federal [vaccine mandate](#) enforced by the Centers for Medicare and Medicaid Services (CMS), and applicable to an estimated 10 million healthcare workers at facilities that receive funding from Medicare and Medicaid.

However, the Court's new rulings do not block (or otherwise impact) other federal, state local or employer vaccine mandates, including the federal vaccine [mandate](#) applicable to federal contractors and subcontractors.

#### What should Employers and Plan Sponsors Do Next?

As a result of the Court's decision on the OSHA ETS, covered employers (those with 100 or more employees) are not currently required to comply with the ETS.

As a result of the Court's decision on the CMS Mandate, employers with covered healthcare workers will need to continue complying with its vaccination requirement.

Employers should continue to comply with all other federal, state, and local requirements pertaining to COVID-19 vaccination and testing, as the OSHA ETS is the only mandate that has been blocked as a result of these developments.

If your organization has already implemented vaccination or testing requirements, it can continue to administer those policies and your Corporate Synergies Team can assist with continued compliance with all other applicable federal, state and local vaccine and testing mandates.

↓ Full Explanation Follows ↓

# Supreme Court Blocks OSHA Vaccine Mandate for Large Employers; Allows Healthcare Worker Mandate to Proceed

On January 13, 2022, the U.S. Supreme Court (“Court”) [blocked](#) the OSHA COVID-19 Emergency Temporary Standard (ETS) [regulation](#) - a rule requiring employers with 100 or more employees to either mandate that employees be vaccinated against COVID-19 or undergo weekly testing. The ETS, which applies to an estimated 84 million workers, went into effect on January 10, 2022. Prior to this decision, the 6<sup>th</sup> Circuit Court of Appeals had upheld the ETS, lifting a stay issued by the 5<sup>th</sup> Circuit Court of Appeals (see our [e-Alert](#)).

On the same day, the Court [upheld](#) a federal [vaccine mandate](#) enforced by the Centers for Medicare and Medicaid Services (CMS), and applicable to an estimated 10 million healthcare workers at facilities that receive funding from Medicare and Medicaid (the “CMS Mandate”). However, the Court’s new rulings do not block (or otherwise impact) other federal, state or local vaccine mandates, including the federal vaccine [mandate](#) applicable to federal contractors and subcontractors.

## How Do these Developments Change the Law?

The Court’s decision to block the ETS is a temporary stay order, and the case now returns to the Sixth Circuit Court of Appeals to determine whether the ETS is beyond OSHA’s authority. However, based on the reasoning of the Supreme Court, which indicated that OSHA had overstepped its bounds by regulating public health generally, rather than just occupational health, it seems unlikely that the ETS will be revived by the 6<sup>th</sup> Circuit Court. Accordingly, at the federal level, a broad-sweeping vaccine mandate for most large private sector employers, seems unlikely to continue.

The Court’s decision on the CMS Mandate changes the law by dissolving temporary injunctions issued by other federal courts that had blocked the mandate’s enforcement. These prior decisions had blocked the CMS Mandate in half of the states. As a result of the Court’s new decision, the CMS Mandate will now be reinstated and can be enforced as written.

## Why Did the Supreme Court Block the ETS?

The Court took issue with OSHA’s authority to impose the ETS mandate. Specifically, the OSH Act, the statute which authorizes OSHA regulation, only allows the agency to set workplace safety standards, not broad public health measures. Specifically, the Court’s decision explained that “[t]he [OSH] Act empowers the Secretary to set workplace safety standards, not broad public health measures . . . Confirming the point, the Act’s provisions typically speak to hazards that employees face at work. And no provision of the Act addresses public health more generally, which falls outside of OSHA’s sphere of expertise.”

## Why Did the Supreme Court Reinstate the CMS Mandate?

The Supreme Court held that, unlike the OSHA ETS, the CMS Mandate’s rules were within the authority of the Secretary of the U.S. Department of Health and Human Services to issue, and specifically, that the CMS Mandate rule “fit neatly” within the language of its authorizing statute.

## What should Employers and Plan Sponsors Do Next?

As a result of the Court’s decision on the OSHA ETS, covered employers (those with 100 or more employees) are not currently required to comply with the ETS. As a result of the Court’s decision on the CMS Mandate, employers with covered healthcare workers will need to continue complying with its vaccination requirement.

Employers should continue to comply with all other federal, state, and local requirements pertaining to COVID-19 vaccination and testing, as the OSHA ETS is the only mandate that has been blocked as a result of these developments. If your organization has already implemented vaccination or testing requirements, it can continue to administer those policies and your Corporate Synergies Team can assist with continued compliance with all other applicable federal, state and local vaccine and testing mandates. ■

**If you have any additional questions,  
please call your Corporate Synergies  
Account Manager or 866.CSG.1719.**