

# U.S. SUPREME COURT AGREES TO HEAR ARGUMENTS ON APPLICATIONS TO STAY THE OSHA AND CMS COVID-19 VACCINE MANDATES

*Hodgson Russ OSHA and Labor & Employment Alert*  
December 23, 2021

While millions of American workers and their employers are facing difficult choices and decisions surrounding the implementation of government-imposed vaccine mandates, the United States Supreme Court agreed on December 22, 2021 to schedule a special hearing on January 7, 2022 to consider arguments on emergency motions to stay the vaccinate-or-test requirements imposed by the U.S. Occupational Safety and Health Administration (“OSHA”) under its Emergency Temporary Standard on COVID-19 Vaccination and Testing (“ETS”), and the Center for Medicare and Medicaid Services (“CMS”) vaccine mandate applicable to certain health care and nursing home workers.

Last Friday, and as discussed in our prior alert (found [here](#)), the United States Court of Appeals for the Sixth Circuit vacated a preliminary injunction that had prevented OSHA from enforcing the ETS since November 6. OSHA promptly advised that it will begin enforcement on January 10, just three days after the Supreme Court will hear arguments on January 7.

A patchwork of recent United States District Court and Circuit Court decisions has resulted in inconsistency with regard to the enforceability of the CMS mandate. A nationwide preliminary injunction imposed by a Louisiana federal district court on November 30 was partially struck down by the Fifth Circuit Court of Appeals on December 15, leaving it applicable in only the 14 States that were parties to the case. Coupled with injunctions granted by other courts in Missouri and Texas, the CMS mandate is currently stayed in 25 States, while it remains in effect for the rest of the country.

For the time being, the Supreme Court (orders found [here](#) and [here](#)) has declined to grant temporary stays pending the January 7 arguments, decisions which will surely leave many employers unsure what to do now. Unfortunately, employers who may be covered by the mandates can ill afford to take a wait-and-see approach without the benefit of a judicial stay of enforcement, and should be prepared to meet applicable compliance deadlines that are currently in effect.

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## Practices & Industries

Labor & Employment  
Occupational Safety & Health Act  
(OSHA)

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If you have questions about OSHA's vaccination ETS or COVID-19 guidance, mandatory vaccination requirements, or other general questions about OSHA compliance, please contact [Jason Markel](#) (716.848.1395), [Glen Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), or any member of our [Labor & Employment Group](#). For questions about the CMS vaccine mandates, contact [Jane Bello Burke](#) (518.433.4204).