

COVID-19

UPDATE: SUPREME COURT GREEN LIGHTS VACCINE MANDATE FOR CMS; STALLS OSHA

January 13, 2022

By: Donald D. Berner

Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

Today the U.S. Supreme Court issued two rulings related to the Biden Administration's vaccine mandates for employees of certain businesses.

First, the Court blocked OSHA's implementation of the COVID-19 Vaccination and Testing Emergency Temporary Standard ("ETS") for large businesses and sent the matter to the Sixth Circuit Court of Appeals to reach a decision on the merits. The stay will remain in place until the Sixth Circuit decides the case. Although the ETS went into effect on Monday, January 10, employers may now stop complying with it until the Sixth Circuit's ruling.

Second, the Supreme Court has given the go-ahead to the Centers for Medicare and Medicaid Services' ("CMS") vaccination mandate by lifting stays imposed by federal courts in Missouri and Louisiana. As previously reported here, on November 4, 2021, CMS issued an Interim Final Rule requiring most Medicare and Medicaid certified providers and suppliers to vaccinate all eligible staff. However, in the weeks following the release of the Interim Final Rule, a series of federal court decisions resulted in a split in CMS' ability to implement and enforce its vaccination mandate. Until today, CMS could implement and enforce its vaccination mandate in 25 states, but was prohibited from implementing and enforcing the mandate in the other 25 states, including Kansas and Missouri. With today's Supreme Court ruling, CMS may now implement and enforce its vaccination mandate in all 50 states, including Kansas and Missouri, while the Fifth and Eighth Circuit Courts of Appeals work through deciding these cases on their merits.

On December 28, 2021, CMS released updated guidance modifying the original compliance dates for the vaccination mandate for the 25 states not covered by the now-lifted stays. The modified compliance dates for the CMS vaccination mandate are January 27, 2022, for the first phase and February 28, 2022, for full vaccination. It is unclear how implementation dates may be impacted now that the Supreme Court has lifted the stay and CMS can implement and enforce its vaccination mandate nationwide. At this point, employers covered by the CMS

FOULSTON

ATTORNEYS AT LAW

vaccination mandate that paused compliance efforts should immediately move ahead to ensure compliance with the mandate now that the stay is no longer in place.

As a reminder for healthcare employers, OSHA announced the withdrawal of the substantive aspects of the Healthcare Emergency Temporary Standard on December 27, 2021. While this withdrawal removes the regulatory provisions OSHA implemented in June of 2021, OSHA has indicated that it will continue to enforce the provisions of the regulation through the general duty clause. Healthcare employers should carefully consider their COVID safety protocols and where appropriate continue to comply with the substance of the Healthcare Emergency Temporary Standard. An issue alert from Foulston on this topic can be found [here](#).

FOR MORE INFORMATION

If you have questions or want more information regarding the Supreme Court's ruling, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Don Berner** at 316.291.9738 or dberner@foulston.com or **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com. For more information on the firm, please visit our website at www.foulston.com. Established in 1919, Foulston is the largest Kansas-based law firm. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

RESOURCES

Sign up to receive these issue alerts straight to your inbox [here](#).

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Employment & Labor
- OSHA
- Healthcare