

EMPLOYER LAW BLOG

# BREAKING: Supreme Court Blocks OSHA Vaccine Mandate on Large, Private Employers

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Private employers with 100 or more employees can now breathe a sigh of relief, as the Supreme Court has blocked the OSHA vaccine mandate for now, finding that the challenges raised are likely to prevail.

In a per curiam opinion, the Supreme Court concluded that OSHA lacked the authority to impose the vaccine mandate because the relevant statute—the Occupational Safety and Health Act (“OSH Act”)—empowered the agency to “regulate *workplace* safety standards, not broad public health measures.”

The Court rejected the claim that COVID-19 was an *occupational* hazard, even though it may occur in many workplaces: “[p]ermitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without clear congressional authorization.”

The Supreme Court also emphasized the “major questions doctrine” that Congress must “speak clearly when authorizing an agency to exercise powers of vast economic and political significance,” in noting that Congress did not do so here. The Court found it “telling that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind—addressing a threat that is untethered, in any causal sense, from the workplace.”

Justice Gorsuch authored a concurring opinion, in which Justices Alito and Thomas joined, that largely echoed the same reasons set forth in the per curiam opinion. On the other hand, Justices Breyer, Sotomayor, and Kagan dissented by suggesting the challengers did not meet the criteria for injunctive relief and OSHA properly acted within its authority in the face of the “grave danger” of COVID-19.

Given this opinion, it is reasonable to expect that the Supreme Court will not permit the OSHA vaccine mandate (as it is currently written) to ever go into effect. Time will tell whether OSHA attempts to re-write the Emergency Temporary Standard, but it appears at this time that the vaccine mandate has come to an end.

Other vaccine mandates continue to be litigated, so stay tuned for further developments.

