

Supreme court partially shuts down COVID vaccine mandate



Not even a week has passed since the Supreme Court heard arguments on OSHA's vaccine mandate. The court considered two mandates—one for private employers with 100+ employees and another covering healthcare facilities receiving Medicare and Medicaid funds.

Yesterday, the court rejected the private employer mandate but upheld the healthcare worker mandate for much the same reason—the extent of congressional authority, which was limited in OSHA's case but expansive for healthcare facilities.

OSHA's shot mandate for private employers nixed

The U.S. Supreme Court, in a 6 - 3 decision, **invalidated** OSHA's vaccine-or-test mandate for private employers with 100+ employees. It ruled the mandate exceeded the agency's authority. *Key consideration for the court:* whether the mandate was a workplace safety standard, which OSHA can clearly regulate, or a *public health provision*, which it cannot.

The court concluded the mandate was a public health provision, and thus beyond OSHA's jurisdiction. *Court:* The OSH Act empowers the Labor Secretary to set *workplace* safety standards, not broad public health measures; no provision of the OSH Act addresses public health more generally.

It wasn't a total loss for OSHA. The court said it retains authority to regulate occupation-specific risks related to covid. *Court:* Where the virus poses a special danger because of the particular features of an employee's job or workplace, targeted regulations are plainly permissible.

Reacting to the court's decision, Labor Secretary Marty Walsh urged employers to require their employees to be vaxxed, in accordance with OSHA's mandate. And he noted OSHA will continue to hold businesses accountable for protecting their employees. He pointed to two existing tools:

- [The Covid-19 National Emphasis Program](#), which ensures employees in high-hazard industries are protected from the hazard of contracting covid.
- [OSHA's General Duty Clause](#), under which all employers must ensure their premises are free from recognized hazards that cause or are likely to cause death or serious physical harm to employees.

The case is [National Federation of Independent Business v. Department of Labor](#).

Health care mandate stands

On the other hand, the court [upheld](#) the shot mandate for employees of health care facilities receiving Medicare or Medicaid funds. *Reason:* It found Congress authorized the Secretary of Health and Human Services to issue the mandate if it was necessary to protect Medicare and Medicaid patients. The court also noted the mandate was consistent with other conditions the government puts on health care facilities receiving Medicare or Medicaid funds.

The case is [Biden v. Missouri](#).

You work in an office. What are you supposed to do now?

You can institute your own vaccine mandate—with exceptions for employees who request medical or religious exemptions and within the bounds of state or municipal law.

Employees who don't get shots, don't ask for a medical or religious exemption, and who refuse to wear masks should be disciplined, as we've said earlier. What discipline is appropriate? Citigroup, parent of Citibank, is the latest example of an employer planning to fire unvaxxed employees by the end of the month.

State law update tracker

We covered states' and municipalities' shot mandates already. The following states have enacted laws since the last time we checked:

- [H.B. 1B](#) prohibits private employers from imposing a shot mandate on employees unless individual exemptions are available to those who don't want shots.
- [H.B. 2001](#) prohibits private employers from imposing a shot mandate on employees unless certain employees can apply for medical or religious exemptions.
- **North Dakota.** [B. 1511](#) prohibits vaccine passports and requires employers with mandatory vaccine policies to accept proof of covid antibodies as a valid exemption from the policy and to allow employees to opt for testing, instead. Employees' proof is valid for six months. Employees with medical or religious objections can opt-out of a mandatory shot policy.
- [H.B. 9077](#) prohibits employers from inquiring into employees' vax status.
- [S.B. 2004](#) requires employers to pay for workplace testing and allows employees with medical or religious objections to opt-out of a mandatory shot policy.