

## **SHRM External Affairs First-Word Webcast Q&A: OSHA ETS Stay Reinstated 1.14.2022**

### **Q: What is the status of OSHA's ETS and what does the Court's decision mean for my employer?**

A: As of now, the federal mandate for employers with 100 or more employees to get vaccinated or institute a masking and testing policy is no longer in effect pending litigation. The compliance deadlines set forth by the Sixth Circuit have been suspended and the case will return to the Sixth Circuit, which will render a decision concerning the merits. It is important to remember that the Supreme Court can only rule on what is before it. In this case, the Court was ruling on whether or not the stay should be reinstated. While the Court opined on the Constitutionality of the ETS, the Court did not render a decision concerning the merits of the ETS. In addition, OSHA has not officially withdrawn the ETS.

### **Q: What is the status of the CMS mandate?**

A: The Supreme Court consolidated arguments for OSHA's ETS and the CMS healthcare mandate into one hearing. In this matter, the Biden administration had petitioned the Court to lift the injunctions placed by the Louisiana and Missouri courts. Within that written opinion, the Court held that CMS was squarely within its authority to institute the rule to protect patient health and safety. Facilities that receive Medicaid and Medicare funding will be required to ensure employee vaccination and appropriate recordkeeping as dictated by CMS's rule, except (at the time of publication) in Texas. Since some states were affected by the injunctions and others not, compliance deadlines may vary. The CMS released [guidance](#) to assist facilities.

### **Q: What about the other federal vaccination mandates?**

A: Various executive agencies released four federal vaccination mandates: (1) OSHA ETS, (2) CMS healthcare vaccination, (3) Federal contractor vaccination mandate and (4) federal employee vaccination mandate. Subsequently, the first three vaccination mandates were challenged in various federal courts across the country, which then issued various injunctions and stays. While the Supreme Court rendered preliminary decisions about the OSHA ETS and CMS mandates, the Supreme Court did not discuss the federal contractor mandate. As a result, the various injunctions in place still apply. Employers unsure about whether they are in a state where the mandate is in effect or not should reach out to trusted counsel.

### **Q: Can companies still institute a vaccination policy?**

A: While there is no federal mandate for private employers, that does not mean that state or local governments have not made policy decisions. Additionally, state OSHA branches may have also issued rules or guidance concerning COVID protocols. While private companies are generally allowed to institute COVID vaccination mandates, masking, or testing policies, it is imperative to check state and local laws. Because of the patchwork nature of vaccination requirements and mandates, SHRM recommends seeking trusted counsel to settle any confusion.