

## **The Supreme Court Rules on OSHA's Emergency Vaccination and Testing Mandates**

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On January 13, 2022, the U.S. Supreme Court issued decisions in two (2) landmark cases analyzing the federal government's authority to mandate vaccine policies in response to the global COVID-19 pandemic, but those decisions will have very limited impact on governmental employers. In *National Federation of Independent Business v. OSHA*, 595 U.S. \_\_\_\_ (2022) (Slip Opinion), the Court stayed OSHA's emergency vaccine and testing mandate created to reduce the spread of COVID-19. Under OSHA's mandate, private sector employers with at least 100 employees would have been required to enforce mandatory COVID-19 vaccination and testing policies. The Court observed that OSHA has never imposed a mandate affecting the public at large in that manner and that the plaintiffs would likely prevail in their argument that OSHA exceeded its authority under the Occupational Safety and Health Act when it issued the mandate. As a result, the Court blocked OSHA from enforcing its mandate pending the outcome of an appeal currently being considered by the Sixth Circuit Court of Appeals.

In *Biden v. Missouri*, 595 U.S. \_\_\_\_ (2022) (Slip Opinion) the Court considered an interim final rule issued by the Department of Health and Human Services that requires certain health care facilities, including nursing homes, receiving Medicare and/or Medicaid payments to implement mandatory vaccine requirements for their employees, subject to potential exemptions for religious or medical reasons. The Court held that vaccination requirements for healthcare workers protect the health and safety of patients and fell squarely within the issuing agency's statutory authority. Although this ruling will not have an impact on most governmental employers, it does apply to county nursing homes.

Despite the significant impact of these decisions on the private sector, with the exception of governmental health care facilities such as county nursing homes, the Court's rulings will not directly affect governmental employers or the vaccine requirements they have adopted or bargained with their unions. Under both the Civil Rights Act of 1964 and the Americans with Disabilities Act, both private sector and public sector employers that adopt COVID-19 vaccination mandates must continue to consider potential exemptions based on medical or religious reasons.

The attorneys at Campbell Durrant have assisted numerous employers in responding to COVID-19 and are prepared to assist with questions regarding requirements relating to COVID-19 vaccination issues.