

BUSINESS

Supreme Court to hear arguments over workplace vaccine mandate



Some Long Island companies say they are ready if the Supreme Court rules that the Biden administration vaccine mandate can proceed. Credit: TNS/Patrick T. Fallon/AFP

By Victor Ocasio

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The fate of a federal vaccine mandate for workplaces nationwide could be decided in the coming days as the U.S. Supreme Court prepares to hear oral arguments over the policy Friday.

The nationwide mandate, announced in September by the Biden administration, requires private firms with 100 or more employees to ensure all in-person workers are either fully vaccinated or submit to weekly COVID testing. It could affect 84 million U.S. workers.

Twenty seven states and multiple business and religious organizations have challenged the mandate in court, saying it goes beyond the scope of the Occupational Safety and Health Administration's power. OSHA is the agency in charge of overseeing the mandate's implementation.

The court is expected to make a swift decision.

"I feel fully prepared for whatever they decide," said Liz Uzzo, senior vice president and chief human resources officer at Melville-based H2M architects + engineers.

Since early December, Uzzo said the firm has been operating under Gov. Kathy Hochul's statewide mandate requiring all onsite employees to be either vaccinated or masked. The company opted to only let vaccinated employees work on site.

Leading up to the holidays, the firm went even further, requiring vaccinated employees onsite to mask up out of an abundance of caution given the contagious nature of the omicron variant.

Uzzo said H2M has a written plan in place and is ready to comply with the federal mandate if the court rules it can go forward.

If the mandate is upheld, companies could receive fines as early as Monday for noncompliance, though companies showing good faith efforts to comply wouldn't be penalized earlier than Feb. 9, OSHA has said. Fines could be up to \$13,000 per violation.

"We've read the regulations and secured the testing kits," Uzzo said, adding that a little over 90% of the firm's New York employees are vaccinated. The company has around 325 employees on Long Island. "We feel like we're in pretty good shape moving forward."

At 1-800-Flowers in Carle Place, a flower, food and gift delivery business, all nonvaccinated employees are already required to test weekly, said spokeswoman Kathleen Waugh. Testing is offered onsite by the company.

At this time, she said, all employees regardless of vaccination status are required to wear masks.

"As we have since the pandemic began, we have a dedicated response team, which meets several times weekly to understand and discuss how to best comply with CDC, federal and state guidelines," Waugh said in a statement. The company has approximately 400 employees on Long Island, she said.

Legal experts said the OSHA mandate makes requiring vaccination across the board more appealing to businesses than overseeing weekly testing, especially given the high demand for test kits.

"If you're going to do vaccination and testing, that is really going to require significantly more planning because tests, at least here on Long Island, are nearly impossible to come by," said Jessica Baquet, chair of the labor and employment law group at Jaspan Schlesinger in Garden City.

The mandate doesn't allow unvaccinated employees to submit results from at-home test kits — a hard-to-find commodity as it is — unless the testing is supervised by the company, which in most cases would likely be an HR professional, Baquet said.

But for many firms that meet the 100-employee threshold but may not have a robust HR department to track weekly test results or verify vaccination status, compliance may be more of a challenge, she said.

Domenique Camacho Moran, labor and employment attorney at Farrell Fritz in Uniondale, said many of her larger clients have already started implementing their vaccine and test policies, but firms that haven't gotten the ball rolling may be running out of time.

"The challenge at the moment is for those that are waiting to roll out the vaccine or test mandate," Moran said. The risk businesses run in not having a vaccine policy in place "is they may be unable to comply" with the mandate in time if the court allows the mandate to go ahead.

While the mandate would impact thousands of private sector employees across Long Island, the number of businesses that would fall under the guideline is relatively low given the region's small-business based economy.

The Island had 97,150 establishments with fewer than 100 workers in 2019, compared with 1,697 firms with 100 or more, according to U.S. census data.

"What's really pretty clear at this point is all employers need to act as if this is going to be required of them, and they need to take steps to draft the policies and start getting things into place," Baquet said. "As long as they're acting as such, there are not going to be citations issued before Feb. 9."