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Supreme Court halts Biden COVID-19 vaccine rule for U.S. businesses



The Supreme Court seen at sunset on Capitol Hill in Washington on Oct. 21, 2021. Credit: Getty Images / Anna Moneymaker

By The Associated Press

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WASHINGTON — The Supreme Court has stopped a major push by the Biden administration to boost the nation's COVID-19 vaccination rate, a requirement that employees at large businesses get a vaccine or test regularly and wear a mask on the job.

At the same time, the court is allowing the administration to proceed with a vaccine mandate for most health care workers in the United States. The court's orders Thursday came during a spike in coronavirus cases caused by the omicron variant.

The court's conservative majority concluded that the administration overstepped its authority by seeking to impose the Occupational Safety and Health Administration's vaccine-or-test rule on U.S. businesses with at least 100 employees. More than 80 million people would have been affected and OSHA had estimated that the rule would save 6,500 lives and prevent 250,000 hospitalizations over six months.

"OSHA has never before imposed such a mandate. Nor has Congress. Indeed, although Congress has enacted significant legislation addressing the COVID-19 pandemic, it has declined to enact any measure similar to what OSHA has promulgated here," the conservatives wrote in an unsigned opinion.

In dissent, the court's three liberals argued that it was the court that was overreaching by substituting its judgment for that of health experts. "Acting outside of its competence and without legal basis, the Court

displaces the judgments of the Government officials given the responsibility to respond to workplace health emergencies," Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor wrote in a joint dissent.

President Joe Biden said he was "disappointed that the Supreme Court has chosen to block common-sense life-saving requirements for employees at large businesses that were grounded squarely in both science and the law."

Biden called on businesses to institute their own vaccination requirements, noting that a third of Fortune 100 companies already have done so.

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U.S. Labor Secretary Marty Walsh called the decision "a major setback to the health and safety of workers across the country," while the National Retail Federation, the nation's largest retail trade group, called it "a significant victory for employers."

Locally, the Long Island Association said the high court's decision will help reduce confusion among larger employers.

"After months of back and forth, businesses can finally move forward and operate with more certainty," said Matthew Cohen, president and CEO of the business group. He said companies "continue to show resilience in keeping their doors open while providing a safe environment for their employees and customers."

In August, the LIA was among the first local business groups to call on business owners and their employees to get vaccinated, saying COVID surges threaten the economic recovery.

When crafting the OSHA rule, White House officials anticipated legal challenges — and privately some harbored doubts that it could withstand them. The administration nonetheless still views the rule as a success at already driving millions of people to get vaccinated and encouraging private businesses to implement their own requirements.

For businesses that still plan to implement a vaccine or test policy on their own, attorney Jessica Baquet, chair of the labor and employment law group at Jaspán Schlesinger in Garden City, said employers need to be sure they are prepared to handle potential requests for exemptions for employees on religious or medical grounds.

"If you're going to voluntarily undertake this task, do it right," she said. "You have to do that consistent with the laws that exist."

The OSHA regulation had initially been blocked by a federal appeals court in New Orleans, then allowed to take effect by a federal appellate panel in Cincinnati.

Both it and the rule for health care workers had been challenged by Republican-led states. In addition, business groups attacked the OSHA regulation as too expensive and likely to cause workers to leave their jobs at a time when finding new employees already is difficult.

Members of Ignite LI, a local manufacturers' group, had feared the mandate would worsen the worker shortage "by driving employees away from the workplace and motivating would-be employees to stay home," said executive director Patrick Boyle, adding that factories cannot offer remote work.

Boyle said LI aerospace and defense manufacturers "are unsure if [a vaccine mandate still] applies to them as they are federal contractors. We anxiously await clarification."

A separate vaccine mandate for federal contractors, on hold after lower courts blocked it, has not been considered by the Supreme Court.

The vaccine mandate that the court will allow to be enforced nationwide scraped by on a 5-4 vote, with Chief Justice John G. Roberts and Justice Brett Kavanaugh joining the liberals to form a majority. The mandate covers virtually all health care workers in the country, applying to providers that receive federal Medicare or Medicaid funding.

New York had already required health care workers to be vaccinated.

— *with James T. Madore and Victor Ocasio*

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