

SCOTUS stopped OSHA's Vax-Or-Test Rule and allowed HHSS' similar mandate for certain health care workers: What does this mean for employers in Puerto Rico?

SCOTUS has spoken.

On January 13, 2022, the Supreme Court of the United States ("SCOTUS") issued mixed opinions. One blocks the Biden administration's vaccine-or-testing rule that OSHA established for private businesses with at least 100 employees, while the other opinion permits the similar rule set by the Health and Human Services Secretary ("HHSS") to be applied to certain health care workers.

In the former, SCOTUS reasoned that, although Congress gave OSHA the power to regulate workplace occupational dangers, it did not give OSHA the power to regulate public health more broadly. SCOTUS' rationale is that OSHA's vaccine-or-testing rule was too broad inasmuch as it did not draw distinctions based on industry or risk of exposure to COVID-19. For this reason, SCOTUS determined that OSHA did not have the authority to require the vaccination of 84 million Americans, selected solely because they work for employers with more than 100 employees.

Conversely, in the latter, SCOTUS ruled that the HHSS did have the power to require vaccination of certain health care workers of facilities that receive Medicare and Medicaid funding, subject to medical and religious exemptions.

What does this mean for the vaccine-or-testing rules?

OSHA's vaccine-or-testing rule is stayed pending disposition of the petitions for review in the United States Court of Appeals for the Sixth Circuit and disposition of their writs of certiorari if these are timely sought. Based on the above, employers with 100 or more employees are not required to comply with OSHA's vaccine-or-testing rule and OSHA must not enforce it.

The HHSS's rule, however, ordering vaccination of health care workers at Medicare and Medicaid, federally funded facilities is considered to be among congressional mandates requiring providers to have in place and enforce infection prevention and control programs.

What does this mean for employers in Puerto Rico?

In Puerto Rico, Governor Pierluisi has issued various Executive Orders requiring employees from certain industries and others whose employers have 50 or more employees to be vaccinated against COVID-19, including the booster shot in some cases. These Executive Orders, which include, among others, health care workers whether or not facilities are funded by Medicare or Medicaid programs, remain in place and covered employers must continue to comply with them as these have not been blocked by local or federal courts. In addition, the SCOTUS' opinions do not affect vaccine requirements voluntarily adopted by private companies. They can still require employees to get vaccinated against COVID-19 as part of their policies.

Stay alert for further updates as this is a rapidly evolving topic. Our COVID-19 multidisciplinary taskforce comprised of practitioners in our different departments, including Labor and Employment, is ready to assist you address its legal and practical considerations. This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information, or about possible effect(s) on policy or operational matters, please contact us at your convenience.

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