

## SUPREME COURT ALLOWS CMS VACCINE MANDATE TO GO INTO EFFECT, BLOCKS OSHA VACCINE MANDATE

January 16, 2022

As [previously discussed](#), on January 7, 2022, the U.S. Supreme Court heard oral arguments regarding injunctions that had been issued preventing the vaccine mandates issued by the Centers for Medicare and Medicaid Services (“CMS”) and the Department of Occupational Safety and Health (“OSHA”) from taking effect. On Thursday, January 13, 2022, the Supreme Court [issued](#) its rulings in the two cases before the Court. The Court [upheld](#) CMS’s emergency regulation, which will require many healthcare providers who participate in Medicare and Medicaid to ensure that their staff are fully vaccinated (as defined in the regulation) against COVID-19. At the same time, the Court [blocked](#) OSHA from implementing its emergency temporary standard (“ETS”), which had been set to go into effect on January 4, 2022. OSHA’s ETS would have required large employers to ensure that workers were vaccinated against COVID-19 or underwent testing at least once a week.

### CMS COVID-19 VACCINE MANDATE

Prior to the Supreme Court ruling, CMS’s vaccine mandate was enjoined in twenty-five (25) states: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming. On December 28, 2021, CMS [announced](#) that it would still proceed with enforcing the mandate in the twenty-five (25) states where an injunction was not in place (California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, and Wisconsin), as well as the District of Columbia and U.S. territories on a modified timeframe.

CMS has [stated](#) that the Supreme Court’s recent decision “does *not* affect compliance timelines for providers in the District of Columbia, the territories, and the[se] 25 states . . . .” Based upon the announced timeline, covered facilities in the twenty-five states where no injunction was in place will need to have in place policies and procedures regarding COVID-19 vaccination by the Phase I deadline of **January 27, 2022**. Additionally, these facilities need to ensure that all covered employees have received their first vaccination, have been granted an exemption, have an exemption request pending, or have been granted a temporary delay in vaccination, as recommended by the CDC because of clinical

precautions and considerations. CMS has [stated](#) that facilities with a vaccination rate of above 80% that have a plan to achieve 100% staff vaccination within sixty (60) days may not be subject to additional enforcement action.

Phase II for these facilities requires that covered individuals (unless they have otherwise been exempted or granted a temporary delay) complete a primary vaccination series by **February 28, 2022**. Providing some relief from this deadline, CMS has indicated it may not take additional enforcement action if the facility has a staff vaccination rate of above 90% by February 28, 2022, and a plan to achieve full staff vaccination within thirty (30) days. A primary vaccination series is defined as a dose of a single-dose vaccine (such as the Johnson & Johnson vaccine) or all required doses of a multi-dose vaccine (such as the Pfizer-BioNTech or Moderna vaccines). For purposes of this deadline, CMS does not require that individuals have completed their 14-day post-vaccination period necessary to be considered fully vaccinated.

CMS now [plans](#) to also move forward with enforcing its vaccine mandate in the twenty-four (24) states covered by the Supreme Court's decision: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming. (As the Texas injunction was not appealed to the Supreme Court it remains unclear when CMS will move forward in Texas.) On January 14, 2022, CMS [released](#) a timeline for compliance for these states.

These states have until **February 14, 2022**, to comply with Phase I, including ensuring that all staff have received their first vaccination against COVID-19. CMS had indicated that facilities with a vaccination rate of above 80% that have a plan to achieve a 100% vaccination rate within sixty (60) days may not be subject to additional enforcement action. Phase II, requiring all employees to have completed a primary vaccination series, should be completed by **March 15, 2022**. Again, CMS may not take additional enforcement action if the facility has a vaccination rate of above 90% by this date and a plan to ensure all staff are fully vaccinated within (30) days.

Thus, covered employers in these states should begin preparing to comply with CMS's vaccine mandate by these dates.

If you have questions or need assistance regarding compliance with these vaccine requirements and other employment laws, please contact a member of Hancock Daniel's [Labor & Employment](#) team. For any other concerns arising from the pandemic, please contact a member of our [COVID-19 Task Force](#).

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