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SUPREME COURT ORDERS OSHA LARGE EMPLOYER MANDATE STAYED; LIFTS STAYS ON CMS VACCINE MANDATE

This afternoon, two hotly anticipated Supreme Court decisions were published regarding two of the Biden Administration's four vaccine mandates: the OSHA Large Employer Emergency Temporary Standard ("ETS") and the CMS Interim Final Rule ("IFR"). **The Supreme Court ordered the OSHA Large Employer ETS Stayed (i.e., it's ineffective and cannot be enforced). The Supreme Court lifted stays entered against the CMS Interim Final Rule (i.e., it's effective, but expect CMS to issue a revised timeline similar to what OSHA did when the Sixth Circuit revived the ETS).**

What does this mean for Large Employers? The now-passed January 10 deadline for employers to have implemented all parts of the ETS except the optional vaccine mandate or vaccine-or-test provision and the upcoming February 9, 2022, deadline for employees to become vaccinated or be subjected to weekly testing (at the employer's choice) are suspended. The U.S. Supreme Court did not definitively kill the ETS, however, but simply put in place a stay based on (among other things) the petitioners' likelihood of succeeding in having the ETS found void on review by the Sixth Circuit.

For those keeping score, the OSHA ETS stay decision was a 6–3 decision divided largely along expected lines with the Court's three more liberal justices (Justices Breyer, Sotomayor, and Kagan) siding against the stay.

What does this mean for those Medicare/Medicaid providers covered by the CMS IFR? Unfortunately, it means the CMS rule is effective because the petitioners (by which I mean, those who want the Rule done away with) didn't, among other things, persuade the U.S. Supreme Court that they were likely to succeed that the IFR exceeded CMS's authority or was procedurally defective or otherwise due to be set aside. The Fifth Circuit and Eighth Circuit Courts of Appeals will now evaluate those arguments in full while the Rule is effective. CMS has not yet announced if those employers in the states affected by today's ruling will receive a delayed compliance schedule. Unlike the OSHA ETS, the CMS Rule was only stayed in 25 states, and CMS published a compliance schedule for the remaining 25 states for Phase 1 compliance on January 27, 2022, and Phase 2 compliance on February 28, 2022. We'll send another eblast when this information is updated.

Chief Justice John Roberts and Justice Brett Kavanaugh sided with the Court's three liberal justices to form a 5–4 majority allowing the CMS requirement to move forward.

Want More Information? Al Vreeland and Whitney Brown will provide a next-day update and analysis tomorrow, January 14, 2022, from 9:00am-9:45am Central. No fee; [link to register is here](#). We'll even prognosticate about what these decisions could mean for the Federal Contractor and Head Start Guidelines. Your registration money back if we're wrong! (Just remember, it's free!)