

Status Of Lawsuits on Federal Vaccine Requirements: January 4, 2021

The two sets of cases being heard by the Supreme Court on Friday, January 7 concern two separate public health and safety policies announced by the Biden administration on November 4:

OSHA Vaccinate or Test Requirement. The Occupational Safety and Health Administration (OSHA) announced a requirement for employers with more than 100 employees to ensure all of their workers are **either** fully vaccinated or tested once weekly. Other elements of the policy include paid time off to receive a vaccination and recover from any side effects and a masking requirement for unvaccinated employees.

- **Previous Rulings:**
 - **The OSHA Rule Was Stayed By The 5th Circuit Court Of Appeals.** On November 6, a three judge panel of the 5th Circuit U.S. Court of Appeals in New Orleans [issued a stay](#) of implementation and enforcement of OSHA's rule requiring private employers with more than 100 employees to implement programs in which workers must show proof of vaccination or undergo weekly testing for Covid-19. The rule covers roughly 84 million workers nationwide.
 - **The Stay Was Dissolved By The 6th Circuit Court Of Appeals.** Because challenges to the OSHA rule were filed in numerous federal courts of appeals, a lottery was held to determine which court would decide the case. The federal government filed a motion asking the 6th Circuit to [lift the Fifth Circuit's stay](#), which the court did, finding "OSHA likely acted within its statutory authority in issuing the mandate."
- **Current Status: The Vaccine Or Test Requirement Went Into Effect On January 4, But, Because Of Lower Court Orders That Had Suspended The Rule, [OSHA Is Giving Employers An Additional Grace Period](#) Due To The Legal Uncertainty That Had Been Created.** OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.
- **What is Being Argued Friday:** A number of business organizations, companies, states, and other groups have asked the Supreme Court to issue a "stay order" barring enforcement of the rule until after the challenge to the rule is finally resolved.
- **Dockets:** The cases are [National Federation of Independent Businesses et al v. Dept. of Labor, OSHA et al](#) and [Ohio et al v. Dept. of Labor, OSHA et al](#).

CMS Vaccine Requirement for Health Care Workers. The Center for Medicare and Medicaid Services (CMS) announced a vaccination requirement for workers at health care facilities that accept federal Medicare and Medicaid funds. This rule would ensure that 17 million health care workers and patients at approximately 76,000 facilities are protected and these facilities can remain fully staffed. Importantly, this requirement includes exemptions for medical reasons, disability, and sincerely held religious beliefs or practice.

- **Previous Rulings:**
 - **One District Court Judge Refused To Issue A Preliminary Injunction Blocking The CMS Rule; That Decision Was Affirmed by the Eleventh Circuit Court Of Appeals.**
 - **Two District Court Judges Issued Preliminary Injunctions Blocking The CMS Rule.** On November 29, U.S. District Judge Matthew Schelp in St. Louis granted a [preliminary injunction](#) in 10 states against a CMS rule that requires employees at facilities receiving Medicare and Medicaid funding to be vaccinated against Covid-19. On November 30, U.S. District Judge Terry Doughty in Monroe, Louisiana issued a [separate preliminary injunction](#) against the rule and applied his ruling nationwide.
 - **CMS Filed Notices Of Appeal With The Fifth and Eighth Circuit Courts Of Appeals.** CMS filed a [notice of appeal](#) of Judge Schelp's injunction in Missouri with the 8th Circuit Court of Appeals and has appealed Judge Doughty's ruling to the 5th Circuit Court of Appeals. It asked both courts of appeals to stay the preliminary injunctions, which would allow the rule to go back into effect.
 - **The Fifth and Eighth Circuits Upheld the Preliminary Injunctions, But Limited to The 25 States That Are Plaintiffs In Those Cases.**
- **Current Status:** The vaccine requirement was set to begin to take effect on January 4, but was delayed because of lower court injunctions. Currently, it is enjoined in 25 states. [In the other 25 states and the District of Columbia](#), staff must have had one shot by January 27 and two shots (if two shots constitute a full series) by February 28. CMS will take enforcement action if a provider is not in full compliance after March 31.
- **What is Being Argued Friday:** The federal government is asking the Supreme Court to stay those district court orders and allow the rule to go into effect in the 25 states (as explained above, the rule is already in effect, on a delayed basis, in the rest of the country).
- **Dockets:** The cases are [Biden v. Missouri et al](#) and [Becerra v. Louisiana et al](#).

Other rules or requirements, such as the Head Start vaccination requirement and the Department of Defense policy that all military personnel must be fully vaccinated, are not before the Supreme Court at this time.