

EMPLOYMENT LAWSCENE ALERT: U.S. SUPREME COURT TO HOLD SPECIAL SESSION ON JANUARY 7, 2022 TO REVIEW FEDERAL VACCINE MANDATES

On Wednesday, the U.S. Supreme Court issued an order (found [here](#)) that it would hold a special session to hear arguments on OSHA's vaccine-or-test rule that mandates employers with 100 or more employees require its employees to be fully vaccinated against the COVID-19 virus or be subject to weekly tests. The Court issued its order in response to emergency applications for an administrative stay in response to the U.S. Court of Appeals for the Sixth Circuit's 2-1 decision lifting the stay on OSHA's emergency temporary standard issued by the U.S. Court of Appeals for the Fifth Circuit back on November 6th.

The U.S. Supreme Court's one-page order simply reads:

Consideration of the applications (21A244 and 21A247) for stay presented to Justice Kavanaugh and by him referred to the Court is deferred pending oral argument. The applications are consolidated, and a total of one hour is allotted for oral argument. The applications are set for oral argument on Friday, January 7, 2022.

It is extremely unusual for the Court to hear arguments on an application for a stay, as it is the Court's customary practice to issue such a ruling based solely on the submission of written briefs.

For now, the U.S. Supreme Court has decided to defer its decision on whether to grant a stay until after the January 7th oral arguments. Although the Court is moving on an expedited basis to hear arguments on whether to grant a stay, with OSHA having previously announced that it would begin enforcement on January 10, but would 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 comply, employers hoping for a stay before the holidays will have to diligently continue their efforts to take the necessary steps to implement by January 4th either a mandatory vaccination policy or adopt a policy requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work in lieu of vaccination.

As always, we will keep you updated on this important issue as matters develop.