

## CLIENT ALERT

### Supreme Court Stays Enforcement of OSHA's COVID-19 Vaccination and Testing ETS

January 13, 2022

On January 13, 2022, the Supreme Court granted applicants' emergency motion to stay enforcement of the Occupational Health and Safety Administration's ("OSHA") COVID-19 Vaccination and Testing Emergency Temporary Standard ("ETS"). In its decision, the Court explained that the plaintiffs were likely to succeed in showing that OSHA lacked the statutory authority to mandate "84 million Americans to either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense." The Court reasoned that "[a]lthough COVID-19 is a risk that occurs in many workplaces, it is not an *occupational* hazard in most" and to permit "OSHA to regulate the hazards of daily life . . . would significantly expand OSHA's regulatory authority without clear congressional authorization." While the Court acknowledged that OSHA has authority to regulate occupational risks related to COVID-19 where the virus "poses a special danger because of the particular features of an employee's job or workplace," it emphasized that OSHA's "indiscriminate approach" does not consider what is an occupational hazard versus a general risk.

Three justices—Breyer, Sotomayor, and Kagan—issued a dissenting opinion, arguing that the mandate "falls within the core of the agency's mission: to 'protect employees' from 'grave danger' that comes from 'new hazards' or exposure to harmful agents." Moreover, the dissent opined that even if the merits were a close question, the Court should not have issued a stay here because the balance of harms and the public interest do not support such an action since "[t]he lives and health of the Nation's workers are at stake" and outweigh any potential economic harm.

The Court also issued its decision regarding the Centers for Medicare & Medicaid Services interim final rule. Unlike with the OSHA ETS, the Court granted the Government's request to stay two district court decisions enjoining enforcement of the rule.

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