



Future Of OSHA Vaccine-or-Test Mandate Looks Tenuous As Supreme Court Weighs In

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In an unprecedented (and fast-paced) move, the U.S. Supreme Court held a hearing today on the consolidated cases challenging OSHA's Emergency Temporary Standard (ETS), which requires large private employers to impose COVID-19 vaccination or testing requirements on employees.

[We covered the hearing live on Twitter @BTLawLE.](#)

The hearing follows closely on the heels of the [Sixth Circuit's decision to lift an earlier stay](#) of the ETS. The Court heard two hours of argument from petitioners representing business organizations and numerous states, which filed emergency applications asking the Court to impose an immediate stay of the OSHA ETS.

The biggest question is which way is the Court leaning? In closely watched Supreme Court cases, Chief Justice Roberts is a strong indicator of which way the Court will side. Based on his questioning and comments today, the Chief Justice seems to believe the federal government has overstepped its bounds in imposing this mandate. Not surprisingly, the Court's liberal bench wants to see this mandate prevail and survive even a brief stay. Justices Sotomayor, Kagan, and Breyer at times steered the government to specific arguments in response to questions from other Justices, helping its cause in doing so.

Justices Gorsuch, Kavanaugh, and Barrett focused most of their questioning on whether OSHA, or any federal agency, can lawfully act in this way to impose a vaccine mandate. Justice Gorsuch focused his questions on this issue, repeating the established authority of the states or Congress to expressly require individuals or workers to be vaccinated.

While a two-hour emergency Supreme Court hearing is certainly

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unprecedented, employers are still holding their breath and wondering whether they will ultimately have to comply with the ETS. The Court raised the possibility of a brief administrative stay to further evaluate the legal issues, but employers need concrete answers. With the first deadline looming Monday, Jan. 10, whichever way they rule, the Supreme Court will need to be decisive to avoid further regulatory meltdown.