



MEMO

TO: Richard Honeycutt, District 3 Vice President
FROM: Robert M. Weaver, District 3 Counsel
RE: U.S. Supreme Court Action on OSHA COVID Vaccine Mandate
DATE: January 13, 2022

Today the U.S. Supreme Court entered an order blocking enforcement of the OSHA COVID Vaccine Mandate pending final disposition of the case in the Sixth Circuit Court of Appeals (and any subsequent review by the Supreme Court). In issuing the order blocking enforcement, the Court questioned whether OSHA has the authority to mandate vaccinations without specific congressional authority. This is not a final decision in the lawsuits filed over the OSHA mandate, but it does signal the Court's view of the mandate.

The Court's order is limited to blocking enforcement of the OSHA mandate. The litigation over the OSHA mandate does NOT involve or address COVID vaccine mandates that were collectively bargained or that were imposed by employers after an impasse in bargaining. Those vaccine mandates arose from the collective bargaining relationship governed by federal labor law, not from OSHA; they are separate from the OSHA-imposed mandate. Thus, the Court's order today does not directly affect COVID vaccine policies that resulted from the bargaining process.

The Court's order, however, does raise one issue regarding the enforcement of employer vaccine policies that resulted from bargaining: the impact of state laws on those policies.

Recall that back in December AT&T and other private sector companies employing CWA members took the position that enforcement of the OSHA mandate superseded any state laws. Their position was that, because the OSHA vaccine mandate was being enforced by the lower courts, they were required to enforce their vaccine mandate policies, despite the bills passed in Tennessee (restricting enforcement of vaccine mandates), or Alabama and Florida (providing more exemptions and/or opt-out from vaccination). No doubt their position was based on the general legal principle that federal laws and regulations adopted at the federal government level supersede state laws that conflict with the federal policy.

As a result of today's Supreme Court order blocking enforcement of the federal OSHA mandate, the certainty of that federal law preemption argument is in doubt. As of now, the OSHA mandate cannot be enforced, and the Court's order casts doubt on its viability going forward. Again, bargained policies, or employer-imposed policies after bargaining, were not addressed by the Court's order today. Without an overriding federal policy in place, however, state laws regarding vaccine mandates should be taken into consideration by private sector employers. Thus enforcement of employer mandates in states that have prohibited them by state law (such as Tennessee) is again in question. Further, enforcement of employer mandates in states that have provided expanded exemptions or opt-outs (such as Florida and Alabama) may again be subject to those state laws.

The District will be communicating with our employer counterparts regarding their intentions now that the OSHA mandate has been blocked again, and we will keep the membership informed of developments as they occur.