



Supreme Court will Review Federal Vaccine Mandates

On Dec. 22, 2021, the U.S. Supreme Court announced that it will hear oral arguments regarding whether two federal vaccine requirements can be enforced while legal appeals are in process. On Jan. 7, 2022, the Court will consider requests on the Occupational Safety and Health Administration's (OSHA) federal emergency temporary standard (ETS) for COVID-19 and the Centers for Medicare & Medicaid Services (CMS) emergency rule requiring COVID-19 vaccination of certain health care workers.

OSHA ETS

The ETS establishes a vaccine-or-test requirement for private employers with 100 or more employees. These employers must require employees to be fully vaccinated against COVID-19 or be tested on a weekly basis and wear face coverings at work.

OSHA issued the ETS on Nov. 5, 2021. It was later blocked nationwide by a federal

appeals court and then reinstated by another court. Groups challenging the rule have asked the Supreme Court to stay the reinstatement while they appeal the ruling. OSHA plans to delay enforcement of the ETS until at least Jan. 10, 2022.

CMS Rule for Health Care Workers

The CMS rule requires Medicare- and Medicaid-certified providers and suppliers to establish a policy requiring covered staff members to be vaccinated against COVID-19 unless they are eligible for an exemption based on recognized medical conditions or religious beliefs.

Multiple federal court rulings have resulted in the CMS rule being blocked in a number of states. While CMS has indicated that it will not enforce the rule due to pending litigation, the Supreme Court will consider whether the lower court rulings should remain in place during the appeals process.

Increased Civil Penalty Amounts for Certain Violations

Effective Nov. 15, 2021, the U.S. Department of Health and Human Services (HHS) has increased the following key penalties affecting group health plans:

- **Summary of Benefits and Coverage (SBC):** up to \$1,190 per participant or beneficiary.
- **Medicare Secondary Payer (MSP):** up to \$9,753.
- **HIPAA privacy and security rules:** Penalties depend on the type of violation involved, and are broken down into “tiers” that reflect increasing levels of knowledge of the violation, as follows:
 - **Tier one:** Minimum \$120, maximum \$60,226, annual cap \$1,806,757

- **Tier two:** Minimum \$1,205, maximum \$60,226, annual cap \$1,806,757
- **Tier three:** Minimum \$12,045, maximum \$60,226, annual cap \$1,806,757
- **Tier four:** Minimum \$60,226, maximum and annual cap \$1,806,757

Employers should become familiar with the new penalty amounts and review their benefit plan administration protocols to ensure full compliance.

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