

Government Relations Update – December 23, 2021

Latest on Vaccine Mandates

OSHA ETS litigation: NAW case selected for Supreme Court argument on January 7th

As you probably read in the press, the Supreme Court issued an order yesterday scheduling oral arguments in two vaccine mandate cases – the challenge to the OSHA ETS mandate in which case NAW is a petitioner, and the separate case challenging the Centers for Medicare & Medicaid Services (CMS) mandate for health care workers.

Of particular significance for NAW members: there were 8 applications for stay of the ETS mandate filed with the Supreme Court after the 6th circuit court vacated the 5th circuit stay. Only two of those applications – ours and one filed by several States – were selected for oral argument.

The argument will be one hour – standard for Supreme Court arguments – with 30 minutes allotted to each side. Our 30 minutes will be split between our attorneys and attorneys representing the States. As of this writing, our attorneys anticipate that the arguments on the CMS case will be heard first at 10:00, followed by the arguments in our case from 11:00-12:00.

The Court order says it is deferring action on the applications for a stay of the OSHA mandate pending the oral argument on January 7th.

As we reported before, OSHA has moved its enforcement deadlines to January 10th for “any requirements of the ETS” and to February 9th for compliance with the testing requirement. Given those dates, it is possible the Court could act on the petitions for stay at the time of the now-scheduled January 7th oral argument. You can read OSHA’s litigation statement here: [HERE](#)

We will of course keep you posted about any further developments in the case.

Federal Contractor Mandate

Earlier this week the 11th circuit court of appeals denied the government’s motion to lift the nationwide stay of the federal contractor mandate imposed by a federal district court in Georgia, pending appeal in the case. The court set a briefing schedule in the case with reply briefs due by January 24th, so a decision in the appeal is at least a month away. Until then, the stay remains in effect. You can read a little more about the 11th circuit decision here: [HERE](#).

OSHA Comments

In the interim, NAW will file Comments with OSHA in case our challenge to the ETS is not successful, to try to help shape their final rule. We have received feedback from many of you about what you have done to encourage your employees to get vaccinated, and how the mandate will impact your businesses. That feedback will be a significant part of our comments (without identifying any companies, of course).

We are particularly interested in knowing –

- What percentage of your workforce remains unvaccinated?
- How many of those workers will leave their jobs rather than get vaccinated?
- Will you pay for weekly tests for unvaccinated workers, or require them to pay?
- Are tests readily available in your area to meet this testing requirement?

If you haven't provided feedback but would like to, you can complete a brief on-line survey – click [HERE](#) – and use the “comments” section on the survey to provide additional information you think would be helpful as we prepare comments.

Or you can email me directly at jwest@naw.org. *Please do not reply to this message because replies go to a mailbox that will not be monitored as often as usual during the remainder of the holiday.*

Many thanks—

Jade West, Chief Government Relations Officer
Blake Adami, Vice President-Government Relations
Seth Waugh, Vice President-Government Relations

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