

# US Supreme Court strikes down Biden large employer vaccine mandate

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14 January 2022

On Thursday afternoon, the Supreme Court of the United States struck down the Biden administration's policy requiring large employers to make COVID-19 vaccines mandatory among workers. While every region of the country is facing an unprecedented surge of the Omicron variant, the decision impacts approximately 84 million workers, more than 20 million of whom are unvaccinated.

In a 6-3 vote, the high court overturned the decision of a three-judge panel of the Sixth Circuit Court of Appeals in Cincinnati that ruled in December that the Biden administration's large employer vaccine mandate was lawful. The original lawsuit was filed by the National Federation of Independent Businesses, an organization that claimed the vaccine mandate "restricts the freedom small business owners depend on to run their businesses and is a clear example of administrative overreach."

The judges in the majority were Chief Justice John G. Roberts Jr. and Justices Brett M. Kavanaugh, Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch and Amy Coney Barrett. Those in opposition to the ruling were Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

In its nine-page decision, the right-wing majority ruled that the Occupational Safety and Health Administration (OSHA)—the federal agency that published the new rules for large businesses in November and is responsible for enforcing the policy—does not have authorization from Congress to impose the mandate.

The specifics of the Biden proposal entitled "COVID-19 Vaccination and Testing; Emergency Temporary Standard" would have mandated employers to require employees to get vaccinated or wear masks each day and get tested for COVID-19 weekly at their

own expense. The rules had provisions for exceptions based on employee religious objections and for workers who do not have indoor close contact with other employees.

The six justices stated that the OSHA rules are not "everyday exercise of federal power" but instead are "a significant encroachment into the lives—and health—of a vast number of employees." In siding with business owners and against the public health interest, the court argued that COVID-19 does not qualify as an occupational hazard and therefore falls outside the responsibility of OSHA to regulate "work-related dangers."

Significantly, the court majority brief states, "COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases. Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA's regulatory authority without clear congressional authorization."

By blocking the Biden administration's vaccine policy—even after 63 million Americans have contracted COVID-19 and more than 843,000 have died from the virus—the Supreme Court has endorsed in legal terms the standpoint of the corporations and Wall Street that the pandemic must be allowed to spread among the working population without restrictions and that the public must "learn to live" with the pandemic.

As a matter of fact, the Supreme Court decision barely even refers to the devastating impact of the pandemic on society as a whole. With its narrow focus on congressional authorization and jurisdiction, the

court expresses indifference to the OSHA projection that the mandate “will save over 6,500 lives and prevent hundreds of thousands of hospitalizations.” The court majority responded to these life-and-death matters with, “It is not our role to weigh such tradeoffs.”

The court also justified its decision by arguing that OSHA lacked a historical precedent for “a broad public health regulation of this kind—addressing a threat that is untethered, in any causal sense, from the workplace.” For the Supreme Court majority, it matters little that OSHA was established by Congress in 1971 and that the COVID-19 virus represents an unprecedented global public health crisis with no historical parallel, with the possible exception of the Great Influenza epidemic of 1918-20 that killed an estimated 20-50 million people worldwide.

In contrast to the reactionary Supreme Court ruling, the Sixth Circuit Court of Appeals decision of December 17 upholding Biden’s OSHA rules begins with the following, “The COVID-19 pandemic has wreaked havoc across America, leading to the loss of over 800,000 lives, shutting down workplaces and jobs across the country, and threatening our economy.”

The claim by the Supreme Court majority that the coronavirus is not an occupational hazard is blatantly false. Transmission of COVID-19 in the workplace is a primary cause of the spread of the virus and has been the subject of significant studies and research. For example, a study conducted in May 2020 by Harvard T.H. Chan School of Public Health showed that workplace transmission played a substantial role in the spread of the disease during the early stages of outbreaks in six Asian countries. Meanwhile, it showed that the majority of work-related cases occurred in occupations other than health care.

In October 2020, a report by the Century Foundation entitled “Halting Workplace COVID-19 Transmission: An Urgent Proposal to Protect American Workers” said that, while the initial wave of the pandemic hit health care and nursing home staff, “tens of thousands of other workers—emergency responders, corrections officers, transit workers, meat and poultry processing workers, farm workers, grocery store and warehouse workers, and many others—have been sickened and hundreds more of them have died.”

In addition to its decision on the large business vaccine mandate, the Supreme Court upheld the OSHA

rules requiring health care workers at medical facilities that participate in the federally funded Medicare and Medicaid programs to be vaccinated. The implementation of this aspect of Biden’s policy will affect more than 17 million health care workers and would “save hundreds or even thousands of lives each month.”

In responding to the legal defeat, Biden appealed to the very same businesses which were behind the campaign to block the vaccine mandate. “The Court has ruled that my administration cannot use the authority granted to it by Congress to require this measure. ... I call on business leaders to immediately join those who have already stepped up—including one-third of Fortune 100 companies—and institute vaccination requirements to protect their workers, customers, and communities.”



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