

Current Status of the Federal Vaccine Mandates

A number of federal vaccine requirements have been imposed, all of which have faced various legal challenges. Highlighted below are two federal vaccine requirements and their current legal statuses.

On Jan. 7, 2022, the U.S. Supreme Court heard oral arguments on two federal vaccine requirements: OSHA's emergency temporary standard (ETS) and the Centers for Medicare & Medicaid Services (CMS) emergency rule requiring COVID-19 vaccination of certain health care workers.

OSHA ETS

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

On Jan. 13, 2022, the Supreme Court [stayed](#) the OSHA ETS, ruling that OSHA was not given the power to regulate public health more broadly than occupational dangers.

Given this ruling, employers are not required to comply with OSHA's ETS at this time. On Jan. 25, 2022, OSHA [withdrew](#) its COVID-19 ETS. However, the agency stated that it will continue to pursue the regulation as a proposed permanent rule.

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.

On Jan. 13, 2022, the Supreme Court [dissolved](#) the temporary injunctions blocking enforcement of the CMS [emergency rule](#). As a result, the emergency rule has been reinstated and is now being enforced. CMS has issued guidance on the rule for various state groups ([QSO-22-07-ALL](#), [QSO-22-09-ALL](#) and [QSO-22-11-ALL](#)).

Coverage of OTC COVID-19 Tests Required

On Jan. 10, 2022, the Depts. of Labor (DOL), Health and Human Services (HHS), and the Treasury issued FAQ guidance regarding the requirements for group health plans and health insurance issuers to cover over-the-counter (OTC) COVID-19 diagnostic tests.

Legal Requirements

Plans and issuers must cover the costs of COVID-19 tests during the COVID-19 public health emergency without imposing cost-sharing requirements, prior authorization or other medical management requirements.

As of Jan. 15, 2022, the cost of these tests must be covered, even if they are obtained without the involvement of a health care provider. However, the FAQs do not require tests to be covered if they are not for

individualized diagnosis (such as tests for employment purposes).

Plan Options

Plans and insurance issuers may place some limits on coverage, such as:

- Requiring individuals to purchase a test and submit a claim for reimbursement.
- Providing direct coverage through pharmacy networks or direct-to-consumer shipping programs.
- Limiting the number or frequency of OTC COVID-19 tests that are covered.
- Taking steps to prevent, detect and address fraud and abuse.

