

# Court Blocks Biden Vaccine Rule --- Justices halt federal mandate for big private employers, but allow health-worker edict

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## FULL TEXT

WASHINGTON -- The Supreme Court blocked the Biden administration's Covid-19 vaccine-or-testing rules for large private employers, upending the government's most aggressive effort to combat the pandemic via the workplace. The high court, however, gave the administration on Thursday more latitude in the healthcare industry, allowing it to impose a vaccine mandate for more than 10 million healthcare workers whose facilities participate in Medicare and Medicaid, a holding that leaves one part of the president's Covid-19 playbook in place.

The private-employer requirements, for businesses with 100 or more employees, would have applied to an estimated 84 million workers. The court's conservative majority, in an unsigned opinion, said the Biden administration likely didn't have the unilateral power to impose a mandate that employers ensure workers were vaccinated or tested every week for Covid-19. Three liberal justices dissented.

President Biden in a statement said the high court's decision to allow the healthcare vaccine mandate "will save lives," but he expressed disappointment that the court blocked "common-sense lifesaving requirements for employees at large businesses that were grounded squarely in both science and the law."

Mr. Biden, a Democrat, also said Thursday that he is directing his administration to procure an additional 500 million at-home rapid Covid-19 tests to send to people free of charge, bringing the total to one billion following calls from public-health officials to expand testing amid a surge in cases.

The court's decision on the requirements for large employers was a relief for some businesses, especially those that have said imposing a mandate would make it harder for them to compete for and keep workers. Other businesses already have adopted mandates for their workers on their own or because of local rules, for example in New York City.

The Occupational Safety and Health Administration issued the private-employer rules in November. Several parts of the regulations, including a requirement for mask-wearing in the workplace by unvaccinated people, were set to take effect this week, though the testing requirements weren't scheduled to be enforced until next month.

The majority's unsigned opinion said the vaccinate-or-test rule appeared to well exceed the authority Congress granted OSHA when it established the agency in 1970.

"The Act empowers the Secretary [of labor] to set workplace safety standards, not broad public health measures," the court said. But while Covid-19 is transmitted in the workplace, it also spreads "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," the court said, and like those other hazards is beyond OSHA's power to address.

The court added that the agency retains power to act in workplaces especially susceptible to the contagion, such as those with "particularly crowded or cramped environments" or where researchers deal with infectious agents. In a joint opinion, dissenting Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan said the pandemic was precisely the kind of emergency Congress intended OSHA to mitigate.

"If OSHA's Standard is far-reaching – applying to many millions of American workers – it no more than reflects the scope of the crisis," they wrote. The virus spreads most easily "in the shared indoor spaces that are the hallmark of American working life," they wrote. "The proof is all around us: Since the disease's onset, most Americans have seen their workplaces transformed."

The dissenters called it perverse to prevent OSHA from addressing a workplace hazard simply because the danger also exists off the job.

In allowing the vaccine mandate for healthcare workers, conservatives Chief Justice John Roberts and Justice Brett Kavanaugh joined the three liberals to form a 5-4 majority, allowing that requirement to take effect nationwide.

That mandate, which doesn't include a testing alternative, was issued by the Centers for Medicare and Medicaid Services, which said facilities that accept money from those programs must comply. Because of conflicting lower court rulings, the mandate had been in effect in only half of the states.

The high court, again in an unsigned opinion, said the secretary of health and human services held broad authority to ensure that the healthcare providers who care for Medicare and Medicaid patients protect their patients' health and safety.

"COVID-19 is a highly contagious, dangerous, and – especially for Medicare and Medicaid patients – deadly disease," the majority wrote, noting healthcare workers and public-health organizations supported the mandate.

"Indeed, their support suggests that a vaccination requirement under these circumstances is a straightforward and predictable example of the health and safety regulations that Congress has authorized the Secretary to impose," the court said.

Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Amy Coney Barrett dissented. Justice Thomas, writing for that bloc, said the Biden administration hadn't made a strong showing that the "hodgepodge of provisions" it relied upon gave it legal support for a national vaccine requirement.

In a second dissent, Justice Alito said that even if the administration had the power to require vaccinations for healthcare workers, this mandate had legal problems because the government didn't seek public comment before putting "more than 10 million healthcare workers to the choice of their jobs or an irreversible medical treatment."

"Employers are responsible for the safety of their workers on the job," Labor Secretary Marty Walsh said. "OSHA will be evaluating all options to ensure workers are protected from this deadly virus."

The court's actions come as Covid-19 has been spreading at record rates in the U.S. Republican-led states and business groups sued to block the federal requirements, arguing the Biden administration was engaged in unlawful overreach that wasn't rendered permissible by the public-health crisis.

"Today's ruling protects our individual rights and states' rights to pursue the solutions that work best for their citizens," said Ohio Attorney General Dave Yost, who led a coalition of Republican-leaning states that challenged the OSHA rule.

Karen Harned, head of the litigation arm of the National Association of Independent Business, an advocacy group that brought the companion case, said: "As small businesses try to recover after almost two years of significant business disruptions, the last thing they need is a mandate that would cause more business challenges."

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Andrew Restuccia contributed to this article.

Credit: By Brent Kendall and Jess Bravin

## DETAILS

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