

# Vaccine requirement upheld, but only in health care facilities

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**What's the news:** A 6–3 U.S. Supreme Court decision yesterday has left more than 80 million Americans without the opportunity for immediate protection of workplace COVID-19 vaccine requirements that can help safeguard them and their co-workers from the hospitalizations and deaths caused by the highly transmissible SARS-CoV-2 Delta and Omicron variants.

In one ruling yesterday, the Supreme Court allowed a Centers for Medicare & Medicaid Services' (CMS) COVID-19 vaccine requirement for health care workers at federally funded medical facilities to stand. But separately, the court reimposed a stay on an Occupational Safety and Health Administration (OSHA) vaccine-or-test requirement for companies with 100 or more employees.

“In the face of a continually evolving COVID-19 pandemic that poses a serious danger to the health of our nation, the Supreme Court today halted one of the most effective tools in the fight against further transmission and death from this aggressive virus,” AMA President Gerald E. Harmon, MD, said in reaction to yesterday's news.

“While the AMA is pleased by today's opinion allowing the CMS interim rule requiring COVID-19 vaccines for health care workers to take effect, we are deeply disappointed that the court blocked the OSHA emergency temporary standard for COVID-19 vaccination and testing for large businesses from moving forward,” added Dr. Harmon, a family physician in South Carolina.

The CMS requirement was allowed to take immediate effect in a 5–4 decision (PDF) reviewing two consolidated cases. The AMA was joined by more than a dozen medical organizations in filing amicus briefs in the *Biden v. Missouri* (PDF) and *Becerra v. Louisiana* (PDF) cases, and the briefs were referenced in the court's ruling.

“Health care workers and public health organizations overwhelmingly support the secretary's rule,” the majority wrote, specifically citing the briefs of the AMA and the American Public Health

Association.

“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 [Health and Human Services] secretary to impose,” adds the ruling by the majority.

In *National Federation of Independent Business v. Department of Labor* (PDF), however, the court ruled 6–3 against the OSHA vaccine-or-test requirement, declaring the standard a “blunt instrument” that treated all businesses the same.

Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor dissented, citing OSHA’s mission to protect workers from “grave danger.” They noted that COVID-19 has killed almost 1 million Americans and hospitalized almost 4 million. The “agency charged with ensuring health and safety in workplaces did what Congress commanded it to: It took action to address COVID-19’s continuing threat in those spaces,” the dissenting justices wrote.

In an amicus brief (PDF), the AMA and 15 other medical organizations argued that the vaccines were proven safe and effective and that “the widespread use of those vaccines is the best way to keep COVID-19 from spreading within workplaces,” and that blocking the requirement would “severely and irreparably harm the public interest.”

**Why it’s important:** While the CMS ruling helps provide protection for some 10 million health care workers and their patients, other workers remain unprotected in the workplace because of the OSHA ruling.

“Workplace transmission has been a major factor in the spread of COVID-19,” Dr. Harmon said. “Workers in all settings across the country need commonsense, evidence-based protections against COVID-19 infection, hospitalization, and death—particularly those who are immunocompromised or cannot get vaccinated due to a medical condition.”

Dr. Harmon cited statistics from United Airlines Inc. showing that, before it instituted its own vaccine requirement, at least one employee per week was dying from COVID-19. Now, however, there are no company employees hospitalized for COVID-19 despite the occurrence of breakthrough infections.

“The high court’s decision does not contest the reliability of scientific evidence in support of COVID-19 vaccine requirements, and in fact, cites the AMA’s support in upholding the CMS rule,” Dr. Harmon said.

“Widespread use of the COVID-19 vaccines has proven to be the safest, most effective way to reduce virus transmission and public harm,” he added. “We continue to urge large employers to do their part



to safeguard their workforces and communities so we can defeat this COVID-19 pandemic together.”

**Learn more:** The AMA supports legal efforts on behalf of policies that require widespread COVID-19 vaccination. Find out why doctors are fighting for COVID-19 vaccine requirements.