



Could Thursday Be the Day? SCOTUS Signals Vaccine Decisions Might Be Released Later this Week

Insights

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The Supreme Court may have just tipped its hand as to when employers can expect to learn the fate of both the OSHA Vaccine ETS and the CMS Healthcare Vaccine Mandate. SCOTUS released [its updated calendar for the remainder of January](#) yesterday, and the update noted that at least one new opinion will be released this Thursday, January 13. Given the fact that it is somewhat out of the norm for SCOTUS to issue opinions on a Thursday, some believe this could be a sign that the Court is reserving this day for the release of these monumental decisions.

Why is a Thursday Release Day Significant?

A note of caution: the Supreme Court is notoriously secretive about its inner workings, and does not announce to the public which cases will be released ahead of time. Moreover, there are at least 25 other cases sitting on the SCOTUS docket that could be released at that time. And given the high stakes involved with the vaccine companion cases, it would not be at all surprising for the Court to drop the opinions in an hour, tonight at 6 PM, or first thing tomorrow morning. However, as you can see from [the Court's calendar](#), opinions are usually released on Tuesday and Wednesday mornings and on the third Monday of each sitting. The unusual nature of a Thursday release day, therefore, may be an indicator that the ETS and CMS rulings are coming on that day. And again, this announcement came on Monday, the next business day after the oral arguments.

What to Look For

SCOTUS opinions are often accompanied by a public reading of at least part of the final decision read aloud by the Justice that authored the majority opinion. If that happens this Thursday, SCOTUS superfans can listen in to the live audio feed of the Court proceedings available on the [front page of the Supreme Court website](#) starting at 10 AM ET. However, it is also quite as likely that the Court will issue its opinions without any further public fanfare. Other ways of staying on top of the news include:

- Refreshing [the official SCOTUS opinions page](#)
- Monitoring [the SCOTUSblog twitter](#) account
- SCOTUSblog often launches [a live chat on its website](#) on significant decision days

Regardless of how you first learn the news, you can be sure that Fisher Phillips will release a quick Insight in the hours after the decisions are released providing employers with a specific game plan to follow. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to receive this update.

What to Expect

We polled 33 attorneys most active on Fisher Phillips' Vaccine Subcommittee to determine what we expect to see from the SCOTUS opinions. The results: a vast majority (79%) believe that the CMS Healthcare Mandate will be permitted to move forward, while only a slim majority (55%) believe the OSHA ETS will be given the green light. You can read a review of our collective predictions here.

However, these predictions were made before the SCOTUS heard oral arguments on January 7. The nature of the questioning has led several attorneys to revise their predictions, with the majority now believing it more likely that the Court will pause the OSHA ETS while permitting the CMS Healthcare Mandate to continue.

What Should Employers Do While We Wait?

The waiting is always the hardest part, but employers shouldn't just be sitting on your hands during this limbo period. Both the OSHA ETS and the CMS Healthcare Mandate already have compliance obligations in effect, and you can't wait until the Court decides in order to act. You can follow our recommendations here.

Conclusion

We will continue to monitor this litigation and provide updates as warranted. Until then, Fisher Phillips has created a set of comprehensive FAQs for employers on the ETS to help you navigate through this process. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information.

If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [FP Vaccine Subcommittee](#) or in our [Healthcare Industry Group](#).

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