

EMPLOYMENT ALERT

**Maine's Medical Provider Vaccine Mandate Upheld
November 1, 2021**

Late on Friday, the Supreme Court ruled that Maine's COVID-19 vaccine could proceed to be enforced, and denied a request for an injunction from impacted health care workers who challenged the law based on the lack of any religious exemption. This means that the October 29th deadline for designated health care providers to be vaccinated will be enforced by the State.

What should Maine employers take away from this case?

1. This was a request for an injunction (an early ruling in a case that has not been fully litigated) and the fact that it was denied does not mean the plaintiffs might not win this case in the end. The majority decision did not amount to an endorsement of Maine's vaccine rule on the legal merits. The majority of the justices were not prepared to make such an important ruling at the infancy of the case and before it had been fully litigated.
2. Three Supreme Court justices found Maine's vaccine rule to be unconstitutional, and in strong language suggested that the denial of a religious exemption "borders on the irrational." If two more justices join them after the case is litigated, the vaccine mandate rule will be found to be unconstitutional.
3. The minority dissenting opinion also offers a glimpse as to how the Supreme Court may view federal vaccine mandates – which surely will reach their courtroom. While recognizing the compelling interest of the State of Maine in fighting COVID, they noted that "[i]f human nature and history teach us anything, it is clear that civil liberties face grave risks when governments proclaim indefinite states of emergency." This sentence may have important ramifications when the OSHA ETS is issued and challenged in the courts.
4. For impacted health care employers, it seems as if they have no choice but to comply with the State's rule; otherwise, they may put their license at risk. However, it seems inevitable that employers will face religious discrimination claims based on Title VII and the Supreme Court decision does not insulate employers from these claims.

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In a sign of how unusual these times are, this Maine case reached the Supreme Court in a matter of weeks. In the short term, one might say that the State of Maine won, but the legal fight is far from over.