

On January 13, 2022, the Supreme Court reached important decision for the construction industry, when the Court held the Secretary of Labor lacked authority under the Occupational Safety and Health Act (OSH Act) to impose a broad vaccine mandate on all larger employers with over 100 employees. The Court focused on the fact that COVID-19 is not uniquely a "work-related danger" or "occupational hazard," as opposed to an infection that "can and does spread at home, in schools, during sporting events, and everywhere else that people gather." As such it is more like "day-to-day dangers that all face from crime, air pollution or any number of communicable diseases." The Court reasoned that "[a] vaccine mandate is strikingly unlike the workplace regulations that OSHA has typically imposed" because it "cannot be undone at the end of the workday." However, the majority emphasized that OSHA probably could regulate special dangers unique to the workplace, such as researchers who work with the COVID-19 virus or risks associated with "particularly crowded or cramped environments" as the dangers of these workplaces would be different in degree and kind from everyday risks.

For the construction industry, the Supreme Court's decision is a win because of the significant additional costs the vaccine mandate would have imposed on projects. Project budgets and pro formas are already stretched thin due to supply-chain disruptions and cost escalation. Many employees within the construction industry remain unvaccinated. In markets in which it is already very difficult, even without a vaccine mandate, to find enough skilled staff and craft workers, the vaccine mandate would have been devastating to many projects, especially when COVID-19 tests remain scarce.

For additional information on this decision and other COVID-19 vaccine mandates, contact one of BBG's attorneys.