

# Why the Supreme Court's OSHA Mandate Decision Likely Won't End Uncertainty for Employers

Media Mentions

January 06, 2022 | *The Business Journals* | 1 minute read | Houston

Bracewell's **Bob Nichols** previewed with *The Business Journals* the US Supreme Court hearings addressing the Occupational Safety and Health Administration's (OSHA) mandate-or-testing rule for the COVID-19 vaccine. OSHA's rule requires employers with at least 100 employees to either mandate the COVID-19 vaccine or require weekly testing of unvaccinated workers.

Nichols said the court doesn't plan to decide the underlying case on the merits but will instead decide whether the rules can go forward while the merits are being litigated — a distinction that could lead to further limbo for employers.

"The most likely long-term policy impact could be to what extent federal agencies have authority to act on an emergency basis in the context of a pandemic to force employers to impose infection mitigation measures on their employees including vaccination and testing," Nichols said. "Some on the court will likely be concerned about sending a message that they have tied the hands of federal agencies to act on an emergency basis in the context of a pandemic."

The hearing will be conducted under the specter of the Omicron variant, which has caused a significant surge in COVID-19 cases, as well as disruptions to several industries.

Even so, Nichols said the rise in cases likely won't change the fundamental issues employers were dealing with on the mandate front.

"Employees who fear infection will likely point to the very transmissible nature of Omicron and continue to push for employers to require their coworkers to be vaccinated," he said. "At the same time, individuals who oppose vaccination mandates will make the argument that Omicron apparently tends

## Related People

**Robert S. Nichols**

Of Counsel

**HOUSTON**

+1.713.221.1259

[bob.nichols@bracewell.com](mailto:bob.nichols@bracewell.com)

## Related Industries

[Healthcare](#)

## Related Practices

[Labor & Employment](#)

# BRACEWELL

to produce somewhat less severe outcomes and, therefore, supports the view that mandatory vaccinations are an unnecessary intrusion into individuals' lives."

[Click here to read more from "The Playbook"](#) (*subscription required*).