

## Medical News &amp; Perspectives

# How the Supreme Court's COVID-19 Vaccine Mandate Rulings Could Shape the Pandemic's Next Phase

Jennifer Abbasi; Rita Rubin, MA; Melissa Suran, PhD, MSJ

In the wake of the US Supreme Court's COVID-19 vaccine mandate rulings, medical groups and public health organizations expressed a mixture of relief and disappointment. On one hand, the nation's highest court had upheld the Centers for Medicare & Medicaid Services (CMS) regulation regarding vaccination requirements for health care workers. On the other hand, the justices decided that the Occupational Safety and Health Administration (OSHA) did not have the authority to require vaccination or masking and regular testing for employees outside the health care system.

The rulings, both handed down on January 13, are destined to shape how the COVID-19 pandemic plays out in its third year and beyond.

In a statement that day, American Public Health Association Executive Director Georges Benjamin, MD, said the OSHA decision will have "a profound, longstanding and disturbing impact not only on vaccine and testing mandates but possibly the death and hospitalization toll of COVID-19 itself." Gerald Harmon, MD, president of the American Medical Association (AMA), said the court had "halted one of the most effective tools in the fight against further transmission and death from this aggressive virus."

## Onus on Businesses

Although masking and testing have an important role in containing SARS-CoV-2 infections, the best way to get the pandemic under control is with widespread vaccination, Ashish Jha, MD, PhD, dean of the Brown University School of Public Health, emphasized in an interview with *JAMA*. Yet a third of people aged 5 years or older in the US haven't received a primary COVID-19 vaccine series, including more than a quarter of adults.

If the US had instituted vaccine mandates last summer and everyone eligible had received a booster dose by the fall,



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"our hospitals would be in a very different shape," said Jha, a general internist and attending physician at the Providence VA Medical Center. "Right now, our hospitals are in very big trouble."

Internist and infectious disease specialist George M. Abraham, MD, MPH, president of the American College of Physicians (ACP), painted a similar picture in an interview, describing hospitals across Massachusetts, where he is based, "bursting at the seams" with a surge of largely unvaccinated patients with COVID-19.

With beds in short supply and many staff unable to report to work due to infection or exposure, elective procedures including cancer screenings and surgeries already delayed during the pandemic again are being postponed "by several weeks to a couple of months," according to Abraham, chief of medicine at Saint Vincent Hospital in Worcester and a professor of medicine at the University of Massachusetts Medical School.

Far from a simple inconvenience, those delays in care could have real consequences for patients. Researchers predict, for example, that a decline in cancer diagnoses during the COVID-19 pandemic may lead to more patients with advanced-stage disease and, down the line, more deaths.

"While we are not proponents of mandates for everything," Abraham said, referring to the ACP, "there is no other way to improve our vaccination rates." Without a federal mandate, Jha said it's now up to companies to require that their workers be vaccinated. In his view, "Any company that chooses not to do this is being irresponsible not only to its employees but to its customers."

Some of the nation's large employers have instituted COVID-19 vaccine mandates. United Airlines set a September 27, 2021, vaccination deadline for its US-based employees. On January 11, in an open letter to the airline's staff, Chief Executive Officer (CEO) Scott Kirby said the positive effects

already were evident. “[O]ur vaccine requirement is working—and saving lives,” he wrote. He noted that although some 3000 employees had COVID-19 at the time, no vaccinated workers were hospitalized. Before the mandate went into effect, COVID-19 accounted for an average of 1 worker death each week. But during the past 2 months, not a single United employee had died from COVID-19.

“[W]hile I know that some people still disagree with our policy,” Kirby acknowledged in the letter, “United is proving that requiring the vaccine is the right thing to do because it saves lives.”

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), made up of 57 national and international labor unions representing 12.5 million workers, hasn’t taken an official stance since the “vaccinate or terminate” trend began. Despite supporting COVID-19 vaccination efforts, the organization believes that employer mandates won’t necessarily lead to higher vaccination uptake and may exacerbate the ongoing staffing crisis, according to Sara Dorner, president of Rockford United Labor, AFL-CIO, which represents [more than 25 000 union members](#) in northern Illinois.

“Locally, we volunteered more than 300 hours to assist and facilitate the vaccine rollout,” Dorner wrote in an email to *JAMA*. “We also believe that vaccines are a personal decision that should be made in consultation with an individual and their physician and should not be a mandatory condition of employment.”

Dorner noted that some businesses requiring vaccination have shirked their own obligation to protect employees during the pandemic, providing inadequate personal protective equipment and contact tracing, for example. That’s short-sighted, she suggested, because employers that improve precautions often increase the momentum for vaccinations among employees. Where workers feel they are one part of the overall effort to reduce infections, “we see higher vaccination rates,” she explained.

Businesses also can take more direct steps to encourage vaccination among employees without requiring mandates, according to Dorner: “Offering premiums like additional paid time off, reduced health insurance premiums, and wage increases could incentivize vaccines among workers



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while increasing [businesses’] ability to recruit and retain staffing.”

Yet Jha pointed out that “vaccine mandates are as old as our country,” noting that [General George Washington](#) required his troops to be inoculated against smallpox. “It’s hardly un-American to have mandates,” he added. “I couldn’t send my kid to a public school and say, ‘Sorry, no polio vaccine for my kid.’” Now that the Supreme Court has ruled against broad COVID-19 vaccine requirements, however, Jha said he is “deeply worried” that people are going to start unwinding mandates for vaccines against polio and other infectious diseases.

### Serious Staffing Concerns

In its decision on the health care worker mandate, the Supreme Court cited a [brief](#) signed by 15 medical societies, including the ACP, the AMA, the American Academy of Family Physicians, and the American Academy of Pediatrics. Although some US physicians have been vocal in their refusal to receive COVID-19 vaccines or mandate them for their staff, Abraham said that well over 95% have been vaccinated. “It’s nurses, it’s housekeepers, it’s technicians—those are the big categories of folks who are choosing not to get vaccinated,” he said, a decision he attributes largely to a combination of misinformation and mistrust.

Some health care institutions, especially those operating in areas with a high degree of vaccine hesitancy, worry they’ll lose staff to the mandate. According to Abraham, the most serious concerns are

around essential positions for which recruitment is challenging, such as hospital maintenance personnel and other service industry staff.

The medical societies’ legal brief cited 3 large hospital systems—Houston Methodist Hospital, Indiana University (IU) Health, and South Shore Health in Massachusetts—where staffing shortage concerns haven’t materialized. At IU Health, for example, only 125 of 35 000 employees, or 0.3%, chose to resign rather than get vaccinated.

In his January 13 [statement](#) on the Supreme Court ruling, American Hospital Association President and CEO Rick Pollack said the organization “will work with the hospital field to find ways to comply that balances that requirement with the need to retain a sufficient workforce to meet the needs of their patients.”

Jha offered some reassurance for businesses concerned about losing employees: “When companies require vaccines, almost everyone gets vaccinated, and very, very few people quit.” For example, on August 3 of last year, Tyson Foods [announced](#) that its entire workforce had to be vaccinated by November 1, 2021. At the time, fewer than half of its 139 000 employees were. But by October 26, more than 96% of Tyson employees had been vaccinated, an increase of nearly 60 000 workers, [according to the company](#). If more businesses mandated vaccination, setting a norm, “it would drive the number of people who quit even lower,” Jha predicted.

For its part, the AMA, which publishes *JAMA*, recently informed employees that it would require not only the primary COVID-19 vaccine series but also boosters for its roughly 1200 workers, including those who don't report to an office.

### Preventing the Next Surge

One industry reeling from labor shortages is the long-term care sector. Nursing homes have [lost 15% of their workforce](#) since the pandemic began—234 000 caregivers, according to the American Health Care Association/National Center for Assisted Living (AHCA/NCAL).

The group is advocating for leniency and a regular testing option for unvaccinated staff members. "When we are in the midst of another COVID surge, caregivers in vaccine hesitant communities may walk off the job because of this policy, further threatening access to care for thousands of our nation's seniors," Mark Parkinson, AHCA president and CEO, said in a [statement](#) about the health care worker vaccine mandate.

The Society for Post-Acute and Long-Term Care Medicine, known as AMDA, has a different view. Its 5500 members include medical directors, physicians, nurse practi-

tioners, physician assistants, and other practitioners in settings including skilled nursing facilities, assisted living communities, hospice, and home care.

In an email, AMDA Executive Director Christopher E. Laxton said the group applauded the Supreme Court's ruling allowing the health care worker vaccine mandate to go forward. He called higher employee vaccination and boosting "a key step in preventing the unnecessary and avoidable increase in illness and death among staff and residents in our setting of care."

The health care worker rule, however, doesn't apply to assisted living communities. Without a broader vaccine requirement or corporate mandates, Laxton noted, unvaccinated staff who work in these facilities "will continue to be a vector of COVID transmission to their vulnerable residents." Moreover, vaccine-hesitant nursing home staff may move to assisted living or other care settings that don't require vaccination, worsening the already dire labor shortage.

While Omicron-related infections appear to be leveling off in some areas, "there is no guarantee that this will be the last" variant-related surge, said Abraham, who emphasized that both US and global vaccination rates must improve. "Predictions are

there will be another surge sometime in the summer...Until we keep viral levels down to as low as possible, there will be ongoing mutations. We might just emerge from this only to be confronted with another surge a few months down the road."

Yet one way or another, the COVID-19 crisis eventually will come to a close. Pandemics "have always ended throughout history, and most have ended without vaccines," Jha explained. "[E]nough people got infected that the virus became less and less of a problem over time."

With the COVID-19 pandemic, "are we going to get there the hard way, through more and more infections and hospitalizations?" he asked. "It is all unnecessary, and that to me is the biggest tragedy of this." ■

**Conflict of Interest Disclosures:** Mr Laxton reported that AMDA is currently funded through a cooperative agreement with the Centers for Disease Control and Prevention to improve immunization rates in all postacute and long-term care settings. His volunteer positions include treasurer, the Center for Excellence in Assisted Living; immediate past chair, Advancing Excellence in Long-Term Care Collaborative; and member, Board of Overseers, American Health Care Association Quality Award. No other disclosures were reported.

**Note:** Source references are available through embedded hyperlinks in the article text online.