



Despite the federal ruling, mandatory vaccination in companies is still in force in Puerto Rico

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By Daniel Rivera Vargas

Although the federal Supreme Court blocked the Joe Biden administration from applying the requirement that employees of large companies be vaccinated against COVID-19 or undergo weekly tests and wear a mask at work, in Puerto Rico the Compulsory vaccination in companies.

Connoisseurs of labor law explained to Microjuris the implications of the most recent decisions of the United States Supreme Court in relation to the battle against the coronavirus, rulings issued yesterday that led to a call from the federal government for companies to voluntarily adopt regulations in favor of the vaccination of their employees.

[Read the decision here](#)

'Employers in Puerto Rico still have to comply with the governor's executive orders regarding vaccination,' former Secretary of Labor Carlos Saavedra told Microjuris.

'Governor Pierluisi's executive orders remain in effect, and private employers can adopt their vaccination policies in accordance with those,' said practicing labor attorney Nany Marchand, capital partner of Ferruauoli LLC .

[Federal Supreme Court blocks vaccination mandates against COVID-19](#)

There are several executive orders from Pierluisi mandating vaccination in certain sectors, such as companies with more than 50 employees, such as contractors, such as "booster", hostels, among others.

In a split decision, the federal Supreme Court yesterday stopped President Joe Biden's mandate to make vaccination mandatory in companies with more than 100 employees, which would have impacted millions of private sector employees, by validating an injunction.

The rulings came three days after the Occupational Safety and Health Administration (OSHA) emergency measure began to take effect. OSHA announced that it would not issue any citations related to its mandatory vaccination order before January 10.

"Although Congress has indisputably given OSHA the power to regulate workplace hazards, it has not given that agency the power to regulate public health more broadly," the court wrote in an unsigned opinion.

US Labor Secretary Marty Walsh expressed disappointment with the compulsory vaccination ban and called on the private sector to protect its employees against COVID-19, according to a press release.

'We urge all employers to require their employees to be vaccinated or tested weekly in order to most effectively combat this deadly virus in the workplace. Employers are responsible for the safety of their workers on the job, and OSHA has plenty of guidance to help

them meet their obligation,' Walsh said in written statements.

The Biden administration did not leave the high federal forum completely empty-handed yesterday, because in another decision the Supreme Court [did validate the guideline that requires vaccination in companies that receive federal funds from programs such as Medicaid and Medicare](#) .

In Puerto Rico, the virus is claiming very high death figures, with about 80 fatalities reported between Wednesday and Friday, according to data from the Department of Health.

In separate interviews, Saavedra and Marchand agreed that the Supreme Court's decision on the vaccination mandate does not affect Puerto Rico because an executive order by Governor Pedro Pierluisi is in force on the island, but the second decision does apply.

Saavedra explained that the decision prohibiting compulsory vaccination was a preliminary injunction, so the case will continue to be discussed on the merits in lower courts.

The decision of the Federal Supreme Court has no effect on the island because the governor's executive order is anchored in law on a different basis, in the authority given by Law 20 of Public Security, a statute whose application in emergencies has already been validated several times. in state courts.

He added that someone could always try to challenge the governor's executive orders after the decision of the federal Supreme Court, but the reality is that this ruling from Washington is an administrative one, because what it resolves is that OSHA exceeded its powers and that the guideline was too broad because it applied to all employees. He explained that the federal Supreme Court does not enter into privacy elements of a constitutional nature.

'In my opinion, there is no room to argue that vaccination cannot be forced, that was not what the Supreme decided, that is important because there are many states with mandates similar to that of Puerto Rico' . 'What was decided is that OSHA used a 'blunt instrument', in good Spanish a machete... it affects in general... If it were only health professionals, personnel who work in conglomerates, it would be a bit more scalpel, but since it was so broad, the Supreme Court understood that OSHA exceeded all employees,' Saavedra said.

Regarding the other decision, that of the CMS agency that has to do with Medicaid and Medicare funds, Saavedra said that it does apply to Puerto Rico. "The employers who have to comply with that order have to comply with it," he said.

Meanwhile, Marchand said that the Supreme Court's decision against vaccination is well-founded, based on the fact that the mandate was too broad, where the agency could not effectively distinguish the coronavirus problem as something labor and not "a problem of the world", so it was an excess, and it was appropriate to paralyze the mandate.

Marchand maintained that Governor Pierluisi's guidelines remain in force. 'The Supreme Court of the United States of America did not address the matter from the point of view of mandatory vaccination at the private level and much less at the state level... it addressed a specific OSHA problem,' he stated.

The decision by CMS and the federal funds differs from OSHA's because it is limited to a small group of employees, those related to the health workforce. 'The Supreme Court understood that there was a compelling interest in continuing to protect employees who protect health'

This decision affects all hospitals, nursing homes, nursing homes, dialysis treatment centers, all those health providers that receive federal funds through Medicaid and Medicare, he specified.

Finally, Marchand echoed the expressions of the federal Secretary of Labor and said that, regardless of the number of employees, companies should consider requiring their employees to get vaccinated against COVID-19.

'One of the priorities employers should have is to provide a work environment in which health is protected,' Marchand said.

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