

## **Supreme Court Hears Arguments on OSHA Vaccine Mandate Challenge**

This morning, the U.S. Supreme Court heard oral arguments on the Biden administration's COVID-19 vaccination and testing mandate for large employers. A decision by the Supreme Court could occur as soon as next week.

Last month, the U.S. Court of Appeals for the Sixth Circuit reinstated the COVID-19 vaccination mandate promulgated by the Occupational Safety and Health Administration (OSHA) through an Emergency Temporary Standard (ETS). The ETS applies to businesses with 100 or more employees and requires employees to be fully vaccinated or comply with weekly testing requirements. This ruling lifted a November injunction that had blocked the ETS and resulted in OSHA suspending enforcement as the legal process went forward.

Following the Sixth Circuit's ruling, OSHA announced that they will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.

NDA will be monitoring legal developments at the Supreme Court and provide information as needed. In addition, NDA will also be providing substantive written comments to OSHA on behalf of the demolition industry in response to the ETS. NDA has created a [members-only guide](#) which provides an in-depth summary of the guidance issued by OSHA on the ETS. Members can also find the text of the ETS [here](#) and additional guidance from OSHA [here](#).

## **2021 OSHA Injury and Illness Data Due by Mar. 2**

NDA is reminding employers that they must electronically submit Form 300A data on workplace injury and illnesses to the Occupational Safety and Health Administration (OSHA) by March 2, 2022. NDA members can find OSHA's injury tracking website [here](#) and further guidance on OSHA's reporting requirements [here](#).

Per OSHA regulations, demolition contractors with 20 or more employees at a single establishment are required to keep injury and illness records and must electronically submit their Form 300A data to OSHA.

The electronic reporting requirements are based on the size of the establishment, not the firm. An establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed. Covered employers must submit Form 300A data even if they had zero recordable injury or illnesses in 2021.

## **IRS issues standard mileage rates for 2022**

The Internal Revenue Service (IRS) recently issued the [2022 optional standard mileage rates](#) used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. Beginning on January 1, 2022, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 58.5 cents per mile driven for business use, up 2.5 cents from the rate for 2021,
- 18 cents per mile driven for medical, or moving purposes for qualified active-duty members of the Armed Forces, up 2 cents from the rate for 2021 and

- 14 cents per mile driven in service of charitable organizations; the rate is set by statute and remains unchanged from 2021.

The standard mileage rate for business use is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

It is important to note that under the Tax Cuts and Jobs Act, taxpayers cannot claim a miscellaneous itemized deduction for unreimbursed employee travel expenses. Taxpayers also cannot claim a deduction for moving expenses, unless they are members of the Armed Forces on active duty moving under orders to a permanent change of station. Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

Taxpayers can use the standard mileage rate but must opt to use it in the first year the car is available for business use. Then, in later years, they can choose either the standard mileage rate or actual expenses. Leased vehicles must use the standard mileage rate method for the entire lease period (including renewals) if the standard mileage rate is chosen.

The IRS guidance above contains the optional 2022 standard mileage rates, as well as the maximum automobile cost used to calculate the allowance under a fixed and variable rate (FAVR) plan. In addition, the guidance provides the maximum fair market value of employer-provided automobiles first made available to employees for personal use in calendar year 2022 for which employers may use the fleet-average valuation rule in or the vehicle cents-per-mile valuation rule.

### **Latest Update on Budget Reconciliation Negotiations**

Last month, Sen. Joe Manchin (D-WV) announced his opposition to President Biden's \$2 trillion budget reconciliation plan known as the Build Back Better Act. President Biden and congressional Democrats had been attempting to pass sweeping legislation that provided new investments in social programs related to climate change, housing, health care, child care and education.

While the Build Back Better Act passed the House in November, Sen. Manchin's opposition effectively kills the legislation in its current form as Democrats need the support of all 50 of their senators to pass the bill through the budget reconciliation process. The legislation contained several concerning provisions that NDA had been fighting to remove from the bill, including paid leave mandates, ten-fold increases to OSHA fines and more.

Despite Sen. Manchin's opposition, Majority Leader Chuck Schumer (D-NY) has threatened to hold a vote on the bill later this month to put every senator on the public record. However, it is unclear whether Senate Democrats would follow through with a vote on legislation that is likely to fail. There also remains the possibility that Majority Leader Schumer will attempt to bring Sen. Manchin back to the negotiating table with a scaled-down version of the bill.

NDA will continue to closely monitor any new legislative efforts on Capitol Hill as it pertains to the budget reconciliation process and keep members updated on the latest developments.