

U.S. Supreme Court Blocks OSHA COVID-19 Vaccination, Masking, and Testing

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On January 13, 2022, the U.S. Supreme Court issued an order which has blocked OSHA's Emergency Temporary Standard regarding COVID-19 ("ETS") from taking effect. In November, OSHA released the ETS which required employers with 100 or more employees to adopt either a mandatory COVID-19 vaccination policy or a mandatory weekly COVID-19 testing and masking policy for unvaccinated employees. The ETS did not apply to public sector employers in Wisconsin.

The U.S. Supreme Court has issued a stay blocking OSHA from enforcing the ETS, ruling OSHA exceeded its authority in enacting the ETS. Thus, employers are no longer obligated to comply with the ETS's requirements, including the vaccination, masking, and testing mandates.

Although the Supreme Court's stay is not a final ruling on the merits of the ETS, it means that the ETS is unlikely to take effect in its current form. The Biden Administration could attempt to draft a narrower ETS related to COVID-19 in the future, but a press release from the White House suggests that is unlikely. Even though the ETS is now blocked, employers may still be subject to other federal, state, and local rules regarding vaccination, masking, and testing. For example, in another decision issued on January 13, 2022, the U.S. Supreme Court upheld the federal COVID-19 vaccination mandate for employers operating certain Medicare and Medicaid certified facilities, and employers subject to this rule should start or continue their implementation efforts to comply with this mandate. Employers also remain free to adopt their own policies mandating vaccination, masking, or testing for the workplace.

If you have questions about your organization's masking, testing, or vaccination policies, we encourage you to reach out to a member of Boardman Clark's Labor & Employment Practice Group.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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