



Employers Rejoice! Supreme Court Stays OSHA's Vaccine-or-Test Mandate

Jan 13, 2022

Categories:

[Publications](#)

Authors:

[Catherine F. Burgett](#)

[Kyle D. Johnson](#)

[Anne E. Duprey](#)

[Jeffrey S. Shoskin](#)

On January 13, a divided U.S. Supreme Court [stayed](#) OSHA's Emergency Temporary Standard ("ETS"), which imposed a vaccine-or-test mandate on employers with 100 or more employees. Numerous states and employers challenged the ETS in Courts of Appeals nationwide and, following the Sixth Circuit Court of Appeals decision lifting an initial stay of the ETS, asked the Supreme Court to stay the vaccine-or-test mandate.

The Supreme Court determined the states and businesses challenging the ETS were likely to succeed on the merits of their argument that the Secretary of Labor lacked the authority to impose the mandate. Although OSHA empowers the Secretary of Labor to set "occupational safety and health standards" and "COVID-19 is a risk that occurs in many workplaces," the Supreme Court reasoned that "it is not an occupational hazard in most." (Op., p. 6.) (emphasis in original). Recognizing that COVID-19 is a risk nearly everywhere, both in and out of workplaces, the Supreme Court stated that "[p]ermitt[ing] OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA's regulatory authority without clear congressional authorization." (Op., p. 7.) Accordingly, the ETS is stayed, pending the Sixth Circuit's review of the merits.

What does this mean for employers?

Employers are no longer required to implement the policies established in OSHA's vaccine-or-test mandate. Employers who already have implemented such a policy should work with human resources and legal counsel to make necessary and appropriate revisions for their workforce. Importantly, although the ETS has been stayed, OSHA's General Duty Clause, which requires all employers to provide a work environment "free from recognized hazards that are

causing or are likely to cause death or serious physical harm” remains in effect. Accordingly, employers should continue to implement appropriate health and safety measures to protect their workforces from the risks of COVID-19.

Frost Brown Todd will continue to monitor the underlying lawsuits challenging the ETS and OSHA’s response to this decision and will apprise you of all relevant future developments.

For more information please contact [Cat Burgett](#), [Anne Duprey](#), [Kyle Johnson](#), [Jeff Shoskin](#) or any attorney in Frost Brown Todd’s [Labor & Employment](#) practice group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.