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OSHA Set to Withdraw Vaccine-or-Test Mandate

Less than two weeks after the U.S. Supreme Court's decision to stay OSHA's vaccine-or-test Emergency Temporary Standard ("ETS"), OSHA announced the official withdrawal of the ETS, effective January 26, 2022.

On November 5, 2021, OSHA adopted the ETS requiring employers with 100 or more employees to develop, implement, and enforce either a mandatory COVID-19 vaccination policy or a policy requiring unvaccinated employees to submit negative COVID-19 test results on a weekly basis.

A divided U.S. Supreme Court blocked enforcement of the ETS because, in part, the Secretary of Labor likely lacked the authority to impose the mandate. The case was returned to the Sixth Circuit for a ruling on the merits.

The Supreme Court's decision left many employers in legal limbo about their next steps. Today's announcement provides certainty for employers surrounding the legal effect of the ETS: beginning January 26, 2022, the ETS is withdrawn.

What does this mean for employers? While too early to tell, OSHA emphasized that it is still considering whether to issue a final rule. It is possible that at the end of its rulemaking process, OSHA will issue a more tailored standard designed to better withstand judicial scrutiny and challenge. In the meantime, OSHA continues to strongly encourage vaccinations.

Frost Brown Todd will continue to keep you apprised of all relevant future developments. For more information, please contact [Cat Burgett](#), [Anne Duprey](#), [Souhila EL Moussaoui](#), [Kyle Johnson](#), [Jeff Shoskin](#) or any attorney in Frost Brown Todd's [Labor & Employment](#) practice group.

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